IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

CERNER MIDDLE EAST LIMITED, a Cayman Islands Exempted Company, Plaintiff, v. iCAPITAL, LLC a U.A.E. limited liability company, and AHMED SAEED MAHMOUD AL-BADIE AL-DAHARI, an individual, Defendant.	Case No. 16CV23151 **SUMMONS**

TO: iCAPITAL PROPERTIES
c/o Dwain R. Schiffer
1520 Stardust Way
Medford, OR 97054

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiffs will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT:
READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 (in the Portland metropolitan area) or toll-free in Oregon at (800) 452-7636.

David J. Elkanich by Garrett Garfield [signature]
SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

David J. Elkanich — 992558
ATTORNEY'S/AUTHOR'S NAME (TYPED OR PRINTED) — BAR NO. IF ANY
HOLLAND & KNIGHT LLP
2300 US Bancorp Tower, 111 SW Fifth Avenue
ADDRESS

Portland, OR 97204 — 503-243-2300
CITY STATE ZIP — PHONE

TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED) — BAR NO.

7/21/2016

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled matter.

[signature]
ATTORNEY OF RECORD FOR PLAINTIFF(S)

7/21/2016

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

[signature]
ATTORNEY OF RECORD FOR PLAINTIFF(S)

PROOF OF SERVICE

STATE OF ________________)
)ss.
County of ________________)

I hereby certify that I made service of the foregoing summons upon the individuals and other legal entities to be served, named below, by delivering or leaving true copies of said summons and the complaint mentioned therein, certified to be such by the attorney for the plaintiff, as follows:

Personal Service Upon Individual(s)

Upon ________________, by delivering such true copy to him/her personally and in person at ________________, on ________________, 2013, at ______ o'clock __ M.

Upon ________________, by delivering such true copy to him/her personally and in person at ________________, on ________________, 2013, at ______ o'clock __ M.

Substituted Service Upon Individual(s)**

Upon ________________, by delivering such true copy at his/her dwelling house or usual place of abode, to-wit: ________________
to ________________, who is a person over the age of 14 years and a member of the household of the person served on ________________, 2013, at ______ o'clock ___M.

Upon ________________, by delivering such true copy at his/her dwelling house or usual place of abode, to-wit:
____
to ________________, who is a person over the age of 14 years and a member of the household of the person served on ________________, 2013, at ______ o'clock ___M.

Office Service Upon Individuals(s)**

Upon ________________, at the office which he/she maintains for the conduct of business at ________________,
by leaving such true copy with ________________, the person who is apparently in charge, on ________________, 2013, during normal working hours, at to-wit: _______ o'clock _____M.

Service on Corporations, Limited Partnerships or Unincorporated Association Subject to Suite Under a Common Name

Upon ________________, by
(NAME OF CORPORATION, LIMITED PARTNERSHIP, ETC.)

(a) delivering such true copy, personally and in person, to ________________, who is a/the * ________________ thereof; OR

(b) leaving such true copy with ________________, the person who is apparently in charge of the office of ________________, who is the * ________________ thereof;

*Specify registered agent, officer (by title), director, general partner, managing agent.

at ________________, on ________________, 2013 at ______ o'clock _____M

DATED ________________, 2013

____
SHERIFF

By ________________
DEPUTY

I further certify that I am a competent person 18 years of age or older and a resident of the state of service or the State of Oregon, and that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm or corporation named in the action.

DATED ________________, 2013

____
SIGNATURE

____
TYPE OR PRINT NAME

____
ADDRESS

________________ Phone ________________

The signature lines on the left should be used only by an Oregon county sheriff or deputy; all other servers complete certificate on the right. The Proof of Service above contains most, but not all, of the methods of service. For example, this form does not include proof of service on a minor or incompetent person. See ORCP 7D.(2) and 7 D.(3) for complete service methods on particular parties.

**Where substituted or office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the defendant at the defendant's dwelling house or usual place of abode, together with a statement of the time, date and place at which such service was made.

#47342376_v1

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

CERNER MIDDLE EAST LIMITED, a Cayman Islands Exempted Company,

Plaintiff,

v.

iCAPITAL, LLC a U.A.E. limited liability company, and AHMED SAEED MAHMOUD AL-BADIE AL-DAHARI, an individual,

Defendant.

Case No. 16CV23151

SUMMONS

TO: AHMED SAEED MAHMOUD AL BADIE AL DAHARI
Chairman
Belbadi Enterprises LLC
13th Floor, C1 Tower, Bainuna Street
Al Bateen
P.O. Box No. 27330
Abu Dhabi, United Arab Emirates

You are hereby required to appear and defend the complaint filed against you in the above entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiffs will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT:
READ THESE PAPERS CAREFULLY!

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If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 (in the Portland metropolitan area) or toll-free in Oregon at (800) 452-7636.

David Elkanich by Garrett Garfield
SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

David J. Elkanich — 992558
ATTORNEY'S/AUTHOR'S NAME (TYPED OR PRINTED) — BAR NO IF ANY

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TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED) — BAR NO

7/21/2016

STATE OF OREGON, County of Multnomah) ss.

I, the undersigned attorney of record for the plaintiff, certify that the foregoing is an exact and complete copy of the original summons in the above entitled matter.

Garrett Garfield
ATTORNEY OF RECORD FOR PLAINTIFF(S)

7/21/2016

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

Garrett Garfield
ATTORNEY OF RECORD FOR PLAINTIFF(S)

PROOF OF SERVICE

STATE OF ____________________)
)ss.
County of ____________________)

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Upon ____________________, by delivering such true copy to him/her personally and in person at ____________________, on ____________________, 2013, at ______ o'clock __ M.

Substituted Service Upon Individual(s)**

Upon ____________________, by delivering such true copy at his/her dwelling house or usual place of abode. to-wit: ____________________ to ____________________, who is a person over the age of 14 years and a member of the household of the person served on ____________________, 2013, at ______ o'clock ___M.

Upon ____________________, by delivering such true copy at his/her dwelling house or usual place of abode. to-wit: ____________________ to ____________________, who is a person over the age of 14 years and a member of the household of the person served on ____________________, 2013, at ______ o'clock ___M.

Office Service Upon Individuals(s)**

Upon ____________________, at the office which he/she maintains for the conduct of business at ____________________, by leaving such true copy with ____________________, the person who is apparently in charge, on ____________________, 2013, during normal working hours, at to-wit: ______ o'clock ____M.

Service on Corporations, Limited Partnerships or Unincorporated Association Subject to Suite Under a Common Name

Upon ____________________, by
(NAME OF CORPORATION, LIMITED PARTNERSHIP, ETC.)

(a) delivering such true copy, personally and in person, to ____________________, who is a/the * ____________________ thereof; OR

(b) leaving such true copy with ____________________, the person who is apparently in charge of the office of ____________________, who is the * ____________________ thereof;

*Specify registered agent, officer (by title), director, general partner, managing agent.

at ____________________, on ____________________, 2013 at ______ o'clock ____M

DATED ____________________, 2013

____
SHERIFF

By ____________________
DEPUTY

I further certify that I am a competent person 18 years of age or older and a resident of the state of service or the State of Oregon, and that I am not a party to nor an officer, director or employee of, nor attorney for any party, corporate or otherwise; that the person, firm or corporation served by me is the identical person, firm or corporation named in the action.

DATED ____________________, 2013

____
SIGNATURE

____
TYPE OR PRINT NAME

____
ADDRESS

____________________ Phone ____________________

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

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CERNER MIDDLE EAST LIMITED, a Cayman Islands Exempted Company,

Plaintiff,

v.

iCAPITAL, LLC, a U.A.E. limited liability company, and AHMED SAEED MAHMOUD AL-BADIE AL-DAHARI, an individual,

Defendants.

Case No. 16CV23151

VERIFIED COMPLAINT (PETITION TO RECOGNIZE FOREIGN ARBITRAL AWARD)

CLAIM NOT SUBJECT TO MANDATORY ARBITRATION

PRAYER AMOUNT: $62,689,958.79

FEE AUTHORITY: ORS 21.160

INTRODUCTION

1. This is an action by plaintiff, Cerner Middle East Limited (“**Cerner**”), against defendants iCapital, LLC (“**iCapital**”) and Ahmed Saeed Mahmoud Al-Badie Al-Dahari (“**Dhaheri**”), for recognition and enforcement of a foreign arbitral award.

2. As security for the judgment Cerner reasonably expects to recover in this action, Cerner seeks further relief in the form of attachment of U.S. Bank N.A., Account No. 153650576967, which is owned by Dhaheri.

PARTIES

3. Plaintiff Cerner is a foreign business entity incorporated and organized under the laws of the Cayman Islands with a principal place of business located at 2800 Rockcreek Parkway, Kansas City, Missouri 64117.

4. Defendant iCapital is a foreign business entity incorporated and organized under

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the laws of the United Arab Emirates ("**U.A.E.**"). Upon information and belief, iCapital operates from C1 Towers, Behind Abu Dhabi Islamic Bank, Al Bateen Street, P.O. Box 37148, Abu Dhabi, U.A.E. and maintains a registered address at P.O. Box 37148, Abu Dhabi, U.A.E.

5. Defendant Dhaheri, upon information and belief, is an individual citizen of Abu Dhabi, U.A.E. Dhaheri and is in possession of an account with U.S. Bank N.A., Account No. 153650576967, in Portland, OR.

FACTUAL BACKGROUND

6. Cerner and iCapital Sole Establishment ("**iCapital S/E**")[1] are parties to a $94 million contract executed on September 27, 2008 (the "**Cerner Business Agreement**") to develop and implement a medical information technology platform in the U.A.E. A duly certified copy of the Cerner Business Agreement is attached hereto as **Exhibit "A."**

7. On the same day that the Cerner Business Agreement was executed, Cerner and iCapital S/E also executed Cerner System Schedule No. 1 ("Schedule No. 1"), Cerner System Schedule No. 2 ("Schedule No. 2"), Cerner System Schedule No. 3 ("Schedule No. 3"), and Cerner System Schedule No. 4 ("Schedule No. 4"), further memorializing the agreement between the parties under the Cerner Business Agreement. Schedule No. 1, together with Schedule No. 2, Schedule No. 3, and Schedule No. 4 are referred to as the "Initial Schedules."

8. On November 28, 2008, Cerner and iCapital S/E amended the Cerner Business Agreement by executing Amendment No. 1 ("First Amendment").

9. On April 2, 2009, Cerner and iCapital S/E executed Cerner System Schedule No. 7 ("Schedule No. 7") and Cerner System Schedule No. 8 ("Schedule No. 8"), further memorializing the agreement between the parties under the Cerner Business Agreement. Schedule No. 7 and Schedule No. 8 are referred to as the "Second Schedules."

10. On June 29, 2009, Cerner and iCapital S/E amended the Cerner Business

[1] In or around the middle of 2012, iCapital S/E reorganized itself from a sole establishment to a limited liability company and became known as iCapital LLC. References to "iCapital" herein shall mean post-reorganized iCapital LLC and references to "iCapital S/E" shall mean pre-reorganized iCapital LLC.

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Agreement by executing Amendment No. 2 ("Second Amendment").

11. On July 1, 2009, Cerner and iCapital S/E executed Cerner System Schedule No. 9 ("Schedule No. 9"), further memorializing the agreement between the parties under the Cerner Business Agreement.

12. On April 6, 2010, Cerner and iCapital S/E amended the Cerner Business Agreement by executing Amendment No. 3 ("Third Amendment").

13. On April 22, 2010, Cerner and iCapital S/E amended the Cerner Business Agreement by executing Amendment No. 4 ("Fourth Amendment").

14. The Cerner Business Agreement, together with the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Initial Schedules, Second Schedules, and Schedule No. 9, are referred to collectively herein as the "CBA."

15. Pursuant to the CBA, iCapital agreed to pay Cerner on specifically defined dates for services rendered thereunder.

16. iCapital S/E promptly defaulted on its payment obligations under the CBA.

17. Cerner continued to fully perform its obligations under the CBA and attempted to resolve the payment disputes.

18. After a series of continued unfulfilled promises by iCapital S/E to pay outstanding amounts nearing US $50 million pursuant to the CBA, Cerner filed a Request for Arbitration with the ICC in September of 2012 ("First Arbitration"), against iCapital S/E, iCapital, and its owner and alter ego, Dhaheri.[2]

19. In December 2012, prior to the filing of an Answer to Cerner's Request for Arbitration, the parties entered into a settlement agreement that addressed both overdue payments and the future payments that were to be made to Cerner in connection with the CBA.

20. The settlement between the parties was memorialized in a Settlement and Payment Agreement dated December 29, 2012 ("SPA"), by and between Cerner, iCapital, and Belbadi

[2] At this time, iCapital S/E had already reorganized itself from a sole establishment to iCapital LLC. Accordingly, both iCapital S/E and iCapital LLC were named as respondents in the First Arbitration.

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Enterprises LLC ("Belbadi"). A copy of the SPA is attached hereto as **Exhibit "B."**

21. The SPA states, *inter alia*, that:

a. "the principal amount owed to Cerner and past due through October 31, 2012 . . . under the CBA for past performance by Cerner of its obligations thereunder equals . . . (AED 118,722,088.00)" ("Overdue Amount");

b. "the Parties desire to enter into this [SPA], setting forth the schedule and form of payments to be made to Cerner for the Overdue Amount, which amount has never been paid or contested;"

c. "the Parties desire to finally and forever quantify the value of Cerner's performance – which performance is fully and irrevocably acknowledged by iCapital – under the CBA . . . .;"

d. "[the Parties] have agreed that iCapital shall pay the Overdue Amount according to a modified payment plan more fully set forth in Schedule A (*Payment Schedule*) . . . .; and

e. The Payment Schedule has been "accepted by Cerner only in reliance upon[, *inter alia*] . . . the issuance of post-dated checks in connection with the Overdue Amount by iCapital (executed by an authorized signatory(ies) of iCapital as acceptable to Cerner) . . . ." SPA at 1-2.

22. The SPA states further that "[i]n the event any payment owed pursuant to [the SPA] is not honored when presented for payment in accordance with Schedule A (*Payment Schedule*) or does not otherwise post in Cerner's account as clearing in accordance herewith, the full amount of that payment and all remaining payments under [the SPA], in addition to [the accrued interest in the amount of AED 28,684,772.00 as of October 31, 2012 ("Accrued Overdue Interest")] shall be accelerated and shall become immediately due and payable in full."

23. On the same day as the parties executed the SPA, Cerner and iCapital executed Amendment No. 5 to the Cerner Business Agreement ("Fifth Amendment") setting out the

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amounts due and those which were to become due from iCapital. A duly certified copy of the Fifth Amendment is attached hereto as **Exhibit "C."**

24. iCapital failed to make timely payments as required under the SPA and instead issued a bad check to Cerner.

25. The first and second checks that iCapital issued to Cerner cleared, but the third check, delivered to Cerner on April 25, 2013 in the amount of AED 34,750,490.37 was returned due to insufficient funds.

26. iCapital's fraudulent actions in tendering a bad check to Cerner caused iCapital to default on the SPA and such default triggered the SPA's acceleration clause.

27. This action, in conjunction with their decision to avoid and not participate in the arbitral proceedings, evidences bad faith and an intention to evade the debt.

THE FOREIGN ARBITRATION AWARD

28. Section 3.1 of the Fifth Amendment, amending section 9.3 of the CBA ("Section 3.1"), contains a written agreement to arbitrate ("Arbitration Agreement").

29. Article 15 of the SPA also provides that "[t]he arbitration provision set forth in Amendment 5 to the CBA shall be applicable to this Agreement."

30. Pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, T.I.A.S. No. 6997, 21 U.S.T. 2517, 1970 WL 104417 (the "New York Convention"), as implemented in Chapter 2 of the Federal Arbitration Act ("FAA"), codified at 9 U.S.C. § 201 *et seq.*, each contracting state must recognize foreign arbitral awards as binding and enforce them in accordance with local procedural law.

31. The Arbitration Agreement is valid, has not been revoked, and is enforceable upon such grounds as exist at law or in equity.

32. The Arbitration Agreement constitutes a written agreement, that provides for arbitration in France, a territory of a signatory of the New York Convention, the subject matter of which is commercial. The CBA, containing the Arbitration Agreement, evidences a transaction

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involving international commerce.

33. Because of iCapital's breach of its payment obligations under both the SPA and Fifth Amendment, Cerner filed a second Request for Arbitration on August 23, 2013 against iCapital and Dhaheri ("Second Arbitration").

34. On or around August 30, 2013, iCapital and Dhaheri were notified by the Secretariat of the Request for Arbitration.

35. Pursuant to ICC Rules ("Rules"), the Secretariat subsequently wrote to the parties on November 15, 2013, notifying them that (i) the Second Arbitration would proceed against iCapital and Dhaheri; (ii) Paris, France was fixed as the place of arbitration, (iii) Cerner was requested to pay US $175,000 as an advance on costs associated with the Second Arbitration, and (iv) the Respondents were requested to pay US $325,000 as an advance on costs associated with the Second Arbitration.

36. On January 24, 2014, again pursuant to ICC Rules, the Secretariat informed the parties that the following three arbitrators were appointed to the arbitrate the Second Arbitration ("Tribunal"):

a. Mr. Andrew de Lotbinière McDougall, co-arbitrator;

b. Dr. Omar Isam Al-Taher, co-arbitrator; and

c. Dr. Nael G. Bunni, President.

37. The Second Arbitration was held on November 17-18, 2014 in Paris, France ("Arbitration Hearing").

38. At the Arbitration Hearing, only Cerner appeared and presented its case, and there was no appearance made by or on behalf of iCapital or Dhaheri.

39. A final arbitration award was entered in favor of Cerner on July 16, 2015 ("Award"). A duly certified copy of the Award is attached hereto as **Exhibit "D."**

40. As part of the Award, the Tribunal made findings that:

a. "[iCapital] was previously structured as a U.A.E. sole establishment which

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was 100% owned by [Dhaheri];"

b. "As sole proprietor of [iCapital], [Dhaheri] was personally liable for the debts and obligations of [iCapital];" and

c. "The restructuring of [iCapital] from iCapital S/E to iCapital LLC did not erase or extinguish the personal liability that [Dhaheri] had to the Claimant for debts incurred by [iCapital]." Award at ¶ 10.2.25.

41. As part of its Award, the Tribunal made further findings that "[i]t [was] clear from the evidence presented . . . that the restructuring of iCapital S/E took place without notice to [Cerner] contrary to the terms of Sub-section 9.16 of the CBA." Award at ¶ 10.2.26.

42. As part of its Award, the Tribunal made additional findings that it was "satisfied that the evidence presented by the [Cerner] in respect of the involvement of [Dhaheri] in the affairs of iCapital, proves that at all material times, [Dhaheri] has been the alter ego of iCapital such that jurisdiction over, and the potential liability of iCapital, is indistinguishable from jurisdiction over, and the potential liability of [Dhaheri]." Award at ¶ 10.2.54.

43. As part of its Award, the Tribunal ordered that iCapital and Dhaheri were jointly and severally obligated to pay Cerner the following amounts:

a. The unpaid Overdue Amount of AED 59,971,607.83; Award at ¶¶ 10.4.33 & 12.2.1;

b. The unpaid Accrued Overdue Interest of AED 28,684,772.00, and after July 31, 2015, the date of the Award, interest at the rate of 9% per annum until payment is made in respect the unpaid Accrued Interest on the Overdue Amount; Award at ¶¶ 10.5.16 & 12.2.3;

c. The unpaid Deferred and Future Amount of AED 95,115,289.00; Award at ¶¶ 10.6.12 & 12.2.2;

d. The unpaid Post-Settlement Interest up to December 9, 2014, the date on which Cerner filed its Post-Hearing Submission, of AED 16,510,978.78; Award at ¶¶ 10.7.10 & 12.2.4;

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e. The unpaid Post-Settlement Interest from December 9, 2014 up to March 31, 2015, the date of calculation, of AED 4,282,947.20, and thereafter at a rate of 9% per annum, equal to AED 38,240.60 until payment is made in respect of the unpaid Post-Settlement Interest; Award at ¶¶ 10.7.10 & 12.2.5;

f. Attorneys' fees and expenses in the amount of US $545,647.89, and simple interest at the rate of 9% per annum on that amount from the date of the Award until payment is made in respect of the Attorneys' fees and expenses; and

g. A reimbursement in the amount of US $661,000.00 in respect of the ICC deposit provisionally paid by Cerner in that amount, and simple interest at the rate of 9% per annum on that amount from the date of the Award until payment is made in respect of the Attorneys' fees and expenses.

44. As of the date of this Verified Complaint, iCapital and Dhaheri are jointly and severally obligated to pay Cerner the cumulative amount of $62,689,958.79, inclusive of interest, penalties, costs, and attorney fees, pursuant to the Award.

DHAHERI'S INDEBTEDNESS AND FINANCIAL MISMANAGEMENT

45. Upon information and belief, Dhaheri's businesses are mismanaged and are experiencing significant cash flow shortages.

46. An investigation conducted by Cerner has revealed, upon information and belief, that Dhaheri's cash flow shortages stem from: (a) difficulties collecting final payments from clients due to delayed billing certifications, (b) continued payment to employees and subcontractors during said delay, and (c) delayed licensing and governmental approvals that, in turn, delay commencement of various projects.

47. Multiple former employees from various Dhaheri-owned companies reported to Cerner during its investigation that said companies have withheld salaries.

48. Cerner has also learned during its investigation that Dhaheri's failure to pay

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commercial counterparties and contractors have resulted in said parties suing Dhaheri individually. For example:

a. In 2010, Dhaheri was named as a defendant in a civil action filed by Emaar, a Dubai-based real estate developer;

b. In 2012, Dhaheri was named as a defendant in a criminal action filed by Al Nibras General Trading Company, a major supplier of wood;

c. In 2013, Dhaheri was named as a defendant in a criminal action filed by Kocache Decoration, a contracting company.

d. In 2014, Dhaheri was named as a defendant in a civil action filed by H.C.L. Infosystems MEA LLC, a leading Indian IT services company;

49. The former CEO of Intellehealth, a health services subsidiary of iCapital, stated to Cerner during the course of its investigation that he was hired by Intellehealth to "get rid of Cerner" and was still owed approximately AED 5,000,000 by iCapital.

50. Cerner was told by a subcontractor that he was owed over US $800,000 for subcontracting work.

51. Focus, an accounting firm based in the U.A.E., is owed approximately AED 1,000,000 by iCapital for its work as a subcontractor on the Wareed Project. Amro Y Al Deeb, the CEO of iCaptial, issued checks to Focus in payment of the debt, but like the checks that iCapital issued to Cerner under the SPA, the checks tendered to Focus ultimately bounced.

52. In early 2016, the National Bank of Abu Dhabi sued Belbadi in the Court of First Instance of Abu Dhabi over a claim for AED 2,000,000. The case was settled in June 2016.

53. In 2015, Apera Health Solutions LLP, a company incorporated in the United Kingdom that had been hired in 2010 to provide consultancy services to Dhaheri-owned companies, obtained a judgment against Dhaheri, iCapital, and E-Capital, another company owned by Dhaheri, in the amount of AED 7,893,386, interest at 3% from April 23, 2013, and attorneys' fees.

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54. In the Apera Health Solutions matter, the court recently ordered precautionary attachment on Dhaheri's funds held by various third parties as well as on stocks owned by Dhaheri to guarantee payment of the judgment in that matter.

55. Upon information and belief, there are approximately 10 additional legal actions that have been brought against Dhaheri or Dhaheri-owned companies, including:

a. Colin Fincham, Cerner's Chief Medical Officer and the former Chief Clinical Officer of iCapital ("Fincham") has commenced an action against Dhaheri on behalf of Apira, a company located in the United Kingdom that was employed to implement Cerner's software in the U.A.E.. iCapital owed Apira approximately AED 3,000,000. Fincham managed to secure an arrest warrant against Dhaheri in Abu Dhabi in late-November, 2015;

b. GBM, a software company, brought an action against iCapital to recover funds from iCapital related to GBM's services on the Wareed Project; and

c. Fincham is also spearheading an action against International Medical Development Holdings, a possible subsidiary of iCapital, related to the non-payment of employee wages.

COUNT I

Recognition of the Award Pursuant to 9 U.S.C., § 201, *et. seq.*

(Against iCapital and Dhaheri)

56. Cerner realleges and incorporates by reference herein paragraphs 1 through 42, above.

57. The New York Convention obligates each contracting state to recognize foreign arbitral awards as binding and enforce them in accordance with local procedural law.

58. The provisions of the New York Convention have been codified and implemented in Chapter 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 201 *et seq*.

59. The Fifth Amendment (amending section 9.3 of the CBA) and Article 15 of the SPA constitute written agreements to arbitrate.

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60. The Fifth Amendment (amending section 9.3 of the CBA) and Article 15 of the SPA provide for arbitration in France.

61. Both the United States and France are signatories to the New York Convention.

62. The subject matter of the CBA and SPA is commercial in nature.

63. The scope of the CBA and SPA implicate rights and obligations that arise outside the territorial jurisdiction of the United States.

64. As of the date of this Verified Complaint, iCapital and Dhaheri are jointly and severally obligated to pay Cerner the cumulative amount of $62,689,958.79 pursuant to the Award.

65. As of the date of this Verified Complaint, iCapital and Dhaheri have not satisfied their joint and several obligation under the Award in any part.

66. As a result of the failure of iCapital and Dhaheri to satisfy the Award, Cerner has suffered, and continues to suffer, damages in an amount to be determined at trial.

67. Cerner is entitled to the entry of an order recognizing and enforcing the Award as a judgment of this Court.

WHEREFORE, plaintiff, Cerner Middle East Limited, respectfully requests that this Court:

a. Enter judgment for Cerner, and against Defendants, on Count I of this Verified Complaint;

b. Enter an order recognizing and enforcing the Award as a judgment of this Court;

c. Award Cerner damages against iCapital and Dhaheri in an amount to be determined at trial;

d. Award Cerner pre- and post-judgment interest, costs and attorneys' fees;

e. On an *ex parte* basis, grant an attachment of all right, title and interest of Dhaheri in the value of U.S. Bank Account No. 153650576967, and any other accounts maintained, owned or beneficially owned by Dhaheri at U.S. Bank;

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f. Enter an order permanently enjoining Dhaheri from transferring U.S. Bank Account No. 153650576967, and and any other accounts maintained, owned or beneficially owned by Dhaheri at U.S. Bank or the funds contained therein, to any third parties until further order of this Court; and

g. Order such other relief as this Court deems just and appropriate.

Dated this 20th day of July, 2016.

HOLLAND & KNIGHT LLP

By: *s/ David J. Elkanich*

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(***Pro Hac Vice Admission Pending***)

Attorneys for Plaintiff CERNER MIDDLE EAST LIMITED

VERIFICATION

I, Anis Zerriny, on oath depose and say that I am an in-house counsel at Cerner Middle East Limited. I am a resident of the United Arab Emirates. In that capacity, I routinely and regularly advise Cerner Middle East Limited in relation to legal matters arising under and related to the law of the United Arab Emirates and I am fully familiar with the law and the facts of this case. I aver that the allegations asserted in this Verified Complaint are true and accurate based upon my personal knowledge, except where stated on information and belief, and there I believe the allegations to be true based upon my review of the relevant documentation.

Anis Zerriny

Dated: July 20, 2016.

Beirut, Lebanon

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Portland, OR 97204
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CERNER

CERNER BUSINESS AGREEMENT

This Cerner Business Agreement (the "Agreement") is made on September 27, 2008 ("Effective Date"), between

iCapital ("Client")	and	Cerner Middle East, Ltd. ("Cerner")
a corporation with its principal place of business at:		an Exempted Company incorporated in the Cayman Islands with Limited Liability with its principal place of business at:
PO Box 37148 Abu Dhabi, Telephone: +971 2 642 0301		2800 Rockcreek Parkway Kansas City, MO 64117, U.S.A. Telephone: (816) 221-1024

Client wishes to implement a System pursuant to the terms and conditions of this Agreement. Cerner agrees to provide and assist in implementing certain Licensed Software, Sublicensed Software and Equipment. This Agreement will cover all of the licenses, solutions, hardware and services provided by Cerner to Client, and consists of the following documents:

- Basic Terms and Conditions
- Exhibit A - Support Services
- Exhibit B - Cerner.com Restricted Access Agreement
- Exhibit C - Governance
- Cerner System Schedule No's. 1 through 5

Cerner and Client may execute additional Cerner System Schedules for any additional licenses, solutions, hardware and services in the future, which will be subject to the terms and conditions of this Agreement. Each capitalized term used in the Agreement shall have the meaning set forth in Article 10 of the Basic Terms and Conditions.

ICAPITAL	CERNER MIDDLE EAST, LTD
By: ______________________	By: ______________________
______________________ (Typed or printed)	Rich Berner
Title: ______________________	Title: General Manager

SIGNATURE PAGE

CERNER

iCapital
1-11S23VT
9/22/08

CERNER BUSINESS AGREEMENT

BASIC TERMS AND CONDITIONS

PREAMBLE

On July 27, 2008, the United Arab Emirates Ministry of Health ("UAE MoH") selected Client as a supplier of choice for a contract for a hospital information system (the "Prime Contract").

Following negotiations, UAE MoH and Client will enter into accordant Prime Contract.

Pursuant to the Prime Contract the Client may sub-contract the provision of several services and wishes to sub-contract the provision of several services out of above mentioned Prime Contract to Cerner.

Cerner and Client therefore agree that Cerner shall provide such sub-contracted services on the terms and conditions of this Agreement.

Client wishes to acquire the rights and services out of this Agreement to provide those to UAE MoH and its Permitted Facilities respectively. Cerner is willing to grant the rights and services out of this Agreement to Client as far as required following Prime Contract and for the period in which Client remains a party to the Prime Contract.

Parties agree that the Prime Contract – as far as it is related to the rights and services granted pursuant to this agreement – will be attached to this Agreement as Exhibit D.

0 GENERAL

0.1 Concept of this Agreement. The Client will be entitled to require services as outlined in this Agreement to be delivered to Permitted Facilities of UAE MoH (as listed in relevant Schedules). As a consequence, Cerner authorizes the Client to contract for Cerner Licensed Software, Sublicensed Software, Equipment and Professional Services for use at UAE MoH as outlined in this Agreement.

At no point in time will the Client be permitted to make any binding commitments on behalf of Cerner which go beyond Cerner's commitments arising out of this Agreement. The Client understands and agrees to ensure that any subcontractors engaged by the Client to fulfill the obligations arising out of the Prime Contract will abide by the same principle and will make no binding commitments on behalf of Cerner. The Client understands and agrees that it bears the sole responsibility and liability to meet these obligations. If the Client fails to do so the Client can be held liable by Cerner for all occurring direct and indirect damages including loss of profits.

The Client must meet all of the obligations attributed to it in this Agreement and must promptly provide Cerner with all reasonable information and co-operation necessary to enable Cerner to perform its obligations under this Agreement. If an obligation in this Agreement requires anything to be done by UAE MoH then Client must procure the UAE MoH to meet that obligation or Client must meet that obligation on the UAE MoH behalf. The Client understands and agrees it is its sole and crucial liability to meet these obligations otherwise Client can be held liable by Cerner for all occurring direct and indirect damages including loss of profits.

If the Client fails to meet an obligation under this Agreement by the required time, then without limiting any of Cerner's other rights or remedies, the time for Cerner to meet its obligations is extended by any delay caused by the failure.

0.2 Governing Language of this Agreement. English is the language that governs this Agreement and shall prevail over any translations that are made of this Agreement. All correspondence, notices or other documents required or permitted hereunder shall be drawn up in English and drawings and diagrams shall be annotated in English.

0.3 Co-operational Obligations. Client shall at all times cooperate and work with Cerner and/or other contractors and/or suppliers engaged by Cerner in relation to the performance of this Agreement. Furthermore, the Client will take care and stand in that its further subcontractors will at all time cooperate and work with Cerner and/or other contractors and/or suppliers engaged by Cerner in relation to the performance of this Agreement accordingly.

0.4 Further Client's Sub-Contractors. Client shall be responsible for ensuring the suitability of any sub-contractors that is uses for the performance of Prime Contract.

0.5 Special Obligations in relation to Licensed Software. Notwithstanding provisions set forth below the Client must not use Licensed Software in any manner not expressly permitted by the license rights, The Client must ensure accordingly that UAE MoH follows the same principles. As a consequence the Client must protect and must ensure that UAE MoH protects Licensed Software with security measures adequate to prevent any disclosure and or use of the Licensed Software that is not permitted by this Agreement.

0.6 Special Obligations in relation to Confidentiality. Notwithstanding any provisions set forth below the Client shall not, without Cerner's prior written approval, disclose or use any Confidential Information. The Client understands and agrees that it must protect and must ensure that UAE MoH and all partners and/or subcontractors engaged in relation to the Prime Contract will keep the same Confidentiality Obligations and will not disclose any of Cerner's Confidential Information.

0.7 Rights of Step-In. In the event of termination of the Prime Contract due to reasons not pertaining to the failure of Cerner or any of its sub-contractors to meet the obligations as set forth in this agreement and related schedules, Client will not act so as to impede the ability of Cerner to step in and provide the services pursuant to this Agreement directly to UAE MoH. Client will provide all reasonable assistance to enable the successful and orderly transition of services to UAE MoH in the event that Cerner steps in as the replacement supplier. In the event of termination of the prime contract for reasons related to failure of Cerner or any of its sub-contractors to meet the obligations as set forth in this agreement and related schedules, Cerner agrees that it will not have the right to step-in and provide the services pursuant to this Agreement directly to UAE MoH without the written consent of the Client.

1. LICENSED SOFTWARE

1.1 License Grant. Subject to the terms and conditions of this Agreement, Cerner grants to Client a non-exclusive, non-transferable license to use the Licensed Software solely as specified in this Agreement.

1.2 Scope of Use.

A. Users authorized by Client may use the Licensed Software solely in accordance with the scope of use limits set forth in the applicable Cerner System Schedule. Client warrants that it has the authority to bind each User and Permitted Facility to the confidentiality and use restrictions set forth in this Agreement.

B. Cerner will provide Client with a copy of the Licensed Software. Client may make sufficient back-up and archival copies for its permitted use of the Licensed Software, but all such copies shall be the sole property of Cerner. No right to use, print, copy, modify, create derivative works of, adapt, translate, distribute, disclose, decompile or reverse engineer the Licensed Software is granted, except as expressly set forth in this Agreement. Cerner hereby reserves all rights not expressly granted hereunder.

C. The Licensed Software will reside at the Designated Facility. Client may, upon advance written notice to Cerner, permanently move the Licensed Software to a different data processing location under the control of Client. Client will not outsource its operation of the Licensed Software to any third party without Cerner's prior written consent. Client acknowledges the crucial nature of all tape backup procedures and the importance of maintaining archive tapes at an offsite location.

1.3 Protection of Licensed Software. The Licensed Software is a product proprietary to Cerner based upon and containing trade secrets and other confidential information. Client will protect the Licensed Software with security measures adequate to prevent disclosures and uses of the Licensed Software that are not expressly permitted under this Agreement. At a minimum, Client will:

A. Retain in strict confidence and not disclose or otherwise make available the Licensed Software to anyone except Client's employees, consultants or customers with a need to know in order to carry out Client's permitted use of the Licensed Software. Client shall inform all outside consultants that all information shared with them concerning the System is confidential and should not be disclosed or used except as necessary to carry on business with Client; provided that each such person has first entered into a written agreement containing restrictions at least as protective of the System as this Agreement.

B. Prior to complying, notify Cerner if Client determines that the law or an order of a court or other government agency requires a non-permitted disclosure or use of the Licensed Software.

C. Maintain written records of the number and location of all copies of the Licensed Software and reproduce (and refrain from removing or destroying) all copyright and proprietary rights notices that are placed upon or within the Licensed Software.

D. Prior to disposing of media, erase all portions of the Licensed Software contained on such media.

E. Notify Cerner promptly in writing upon learning of any unauthorized disclosure or use of the Licensed Software, and cooperate fully and promptly with Cerner to cure any unauthorized disclosure or use of the Licensed Software.

I. EQUIPMENT AND SUBLICENSED SOFTWARE

2.1 Purchase of Equipment. Client agrees to purchase from Cerner the Equipment set forth on each Cerner System Schedule executed by the parties. Subject to Paragraph 9.22 below, future purchases of Equipment and certain Sublicensed Software licenses may be accomplished by a written purchase order (setting forth in reasonable detail a description of the Equipment and/or Sublicensed Software) or a change order signed by Client and Cerner. All such purchases shall be subject to the terms and conditions of this Agreement. Client assumes all responsibility for validation of purchased hardware, peripheral devices, and the use of device configurations which are not recommended by Cerner. Cerner accepts no responsibility or liability for any costs, expenses, claims for damages incurred by Client or any third party as a result of the failure of the System, or any component thereof, or any other system of Client to function properly as a result of the use of the non-recommended devices. For these non-recommended devices, Cerner may provide, on a fee-for-service basis only, services to assist with the installation and support of the devices. Cerner, however, assumes no responsibility nor guarantees the results of these services or that the device will continue to work with the next revision of Licensed Software.

2.2 F.O.B. Prices. The Equipment is priced F.O.B. the manufacturer's plant. Cerner will arrange, pre-pay, and invoice Client for insurance and shipping with respect to delivery of the Equipment. If Client has agreed in writing to a shipment date, Client agrees to pay all cancellation, re-stocking, storage and additional transportation fees incurred as a result of failure to accept delivery of the Equipment or Sublicensed Software.

2.3 Cerner Security Interest. Cerner retains a security interest in each item of Equipment listed on a Cerner System Schedule until the Client pays Cerner in full for all Equipment listed on that Cerner System Schedule. Client agrees to execute all documents (such as a UCC-1 or its equivalent) necessary for Cerner to perfect a security interest in such Equipment within ten (10) days of Cerner's request.

2.4 Sublicense Grant. Subject to the terms and conditions of this Agreement, Cerner grants to Client a non-exclusive, non-transferable and non-assignable sublicense to use the Sublicensed Software on the terms and conditions which are set forth for end-users in the license granted to Cerner by the applicable Sublicensed Software supplier.

2.5 Pass Through Provisions. The Equipment and Sublicensed Software may be subject to the terms and conditions set forth in certain pass-through provisions from the third party suppliers of such products. All warranties, if any accompany such product(s), are the responsibility of the third party supplier only and are contained in the pass-through provisions provided to Client at the time of purchase and/or posted on Cerner's website.

3 INSTALLATION

3.1 Site Preparation. Client will prepare its Designated Facility for the installation of Licensed Software, Equipment and Sublicensed Software by a date agreed upon by the parties. In the event the site(s) is/are not prepared by such agreed-upon date, Client agrees to accept shipment, either at Client facility or at a bonded warehouse certified for storage of computer equipment, at Client's expense. In such case, Client accepts all responsibility for damage or loss, and agrees to promptly pay to Cerner any fees due upon installation of the Equipment and Sublicensed Software. The parties will determine the Licensed Software and Sublicensed Software installation schedule no later than thirty (30) days after execution of the applicable Cerner System Schedule.

3.2 Installation. Cerner and Client will each perform the installation tasks identified in a Project Agreement. Client is responsible for installation and costs related to data communication lines and cabling. Client agrees to pay the fees set forth in each Cerner System Schedule for the installation of the Licensed Software, Equipment and Sublicensed Software. Upon request by Client and for additional fees, Cerner will install third party hardware and/or software not purchased through Cerner.

4 PROFESSIONAL SERVICES

4.1 Project Implementation Scope. The scope of each Implementation will be set forth in a Project Agreement or in an Arrangement Letter. Each party agrees to perform the tasks assigned to such party in each Project Agreement and Arrangement Letter. Any changes to the scope of an Implementation will be set forth in an Arrangement Letter identifying the additional services, associated fees and deliverables. Client agrees to pay a premium for each conversion that occurs on a Friday, Saturday, or UAE Holiday.

4.2 Learning Events. Cerner will conduct the learning events set forth in a Project Agreement at a Cerner educational facility. Client will be responsible for all travel and temporary living expenses incurred by its personnel while attending training at Cerner's facility, and for Cerner's reimbursable expenses (as set forth in Paragraph 7.3 below) when Cerner personnel provide training to Client at any place other than Cerner's facility. Cerner will provide such training between the hours of 8:00 a.m. and 5:30 p.m. Sunday through Thursday; additional fees will apply for any training services provided at other times.

4.3 Project Suspension. If Client requests that a Project be suspended, the terms of suspension shall be set forth in an Arrangement Letter. Additional fees may be incurred when the Project resumes, including, but not limited to, increased professional service rates, planning, defining scope, reviewing and documenting completed work, and educating new Project team members. Client further recognizes Cerner is not obligated to provide the same Project team members that were assigned to the Project prior to the suspension.

4.4 Project Delay. In the event First Productive Use of the Licensed Software is delayed from the date specified in the Project Agreement for a period greater than one hundred eighty (180) days and such delay is not due to Cerner's sole fault (see also Paragraph 9.25), Client agrees that all fees for professional services, Licensed Software, hardware and Sublicensed Software related to the agreement for which first productive use is delayed shall immediately become due and payable, regardless of a request for suspension as provided for in Paragraph 4.3 being issued and without prejudice to Cerner's rights under that paragraph. Any professional services performed thereafter shall be paid for separately.

5 SUPPORT FOR LICENSED SOFTWARE

5.1 Support Services and Support Fees. Cerner will provide the Support services set forth in Exhibit A. Client agrees to provide a single, centralized support structure (e.g. help desk) for Support requests to Cerner. The total amount of the monthly Support fees set forth on a Cerner System Schedule begin upon the effective date of such Cerner System Schedule. Cerner may revise such Support fees any time following the initial thirty six (36) month period after such fees begin (but no more frequently than once in any 12 month period) by giving Client sixty (60) days' prior written notice. The amount of any increase in the Support fees shall not exceed five percent (5%) per annum. Cerner will have no obligation as part of its Support services to provide assistance with problems caused by Equipment or Sublicensed Software failure where Client has not purchased the applicable Maintenance services from Cerner.

5.2 New Releases. Cerner will, as part of Support services, provide New Releases to Client. Client will, at its own expense, obtain any Equipment and Sublicensed Software required to run New Releases. If Client requests assistance from Cerner to install New Releases, Client agrees to pay Cerner's installation charges and associated expenses.

5.3 Client's Right to Terminate Support. Client may not terminate Support before the end of twelve (12) months after First Productive Use of the applicable Licensed Software, after which time it may terminate Support for an item of Licensed Software upon three hundred sixty-five (365) days' prior written notice to Cerner.

5.4 Cerner's Right to Terminate Support. Except as set forth below, Cerner may not terminate Support for an item of Licensed Software for a period of three (3) years after First Productive Use of such item.

Cerner may, however, immediately terminate Support if Client (a) fails to pay invoices (or defaults in payments to the financier of such amounts due), (b) attempts to modify the Licensed Software, or (c) creates and uses programs that write to Cerner databases. Notwithstanding anything to the contrary contained herein, Cerner shall not be obligated to provide Support for Licensed Software that is not either (1) the most current or (2) the next to most current, New Release of such software.

5.5 Additional Services. Cerner will make available certain optional consulting services that Client may request, at Cerner's then-current rates. Such additional services include, but are not limited to, additional training or retraining of Client's employees and performance of tasks necessitated by Equipment or Sublicensed Software failures that occur while Client is not on Cerner-supplied Maintenance.

6 MAINTENANCE FOR EQUIPMENT AND SUBLICENSED SOFTWARE

6.1 General. Cerner will provide Maintenance services to Client for Equipment and Sublicensed Software, as identified on a Cerner System Schedule. Maintenance services shall begin upon the earlier of installation or thirty (30) days after shipment of the Equipment and Sublicensed Software. Cerner may subcontract all or part of its Maintenance obligations to a third party maintenance supplier. Maintenance services are obtained from Cerner by contacting the same Cerner service center through which Client receives Support.

6.2 Maintenance Services for Equipment. Maintenance services for Equipment are as follows: (a) initial determination to identify the source of the problem, problem management, critical situation escalation and recovery services; (b) dispatching and coordinating the activities of the third party Maintenance supplier; (c) communicating with the third party Maintenance supplier throughout the resolution of the issue; (d) field change orders; and (e) inclusion of Equipment issues in a tracking database. Cerner and its third party Maintenance suppliers are also responsible for correcting any problems that can be cured through the above-specified Maintenance services. Maintenance services for Equipment do not include any services other than those services specifically identified above.

6.3 Maintenance Services for Sublicensed Software. Maintenance services for Sublicensed Software are as follows: (a) initial determination to identify the source of the problem, problem management, critical situation escalation and recovery services; (b) all new versions of Sublicensed Software that Cerner is authorized to distribute; (c) other revisions, patches, modifications, updates, or fixes of the Sublicensed Software that Cerner is authorized distribute; (d) communicating with third party Maintenance providers throughout the resolution of the issue, (e) inclusion of Sublicensed Software issues in a tracking database. Maintenance services for Sublicensed Software do not include any services other than those services specifically identified above.

6.4 Maintenance Warranties, Fees and Term. Maintenance warranties, if any, commence upon the earlier of installation or thirty (30) days after shipment. Client agrees to begin paying Maintenance fees on the later of (a) the expiration of any applicable warranty, or (b) the earlier of (1) installation, or (2) thirty (30) days after shipment. Maintenance services will continue for an initial term of one (1) year, or such longer period as agreed upon by the parties. Maintenance shall automatically renew for additional periods of the same duration, unless Client provides Cerner with written notification of its intent to terminate Maintenance no less than sixty (60) days prior to the expiration of the then-current period. In addition, Client agrees to immediately notify Cerner of any Equipment items that are no longer being used by Client, and therefore no longer require Maintenance. Cerner shall have the right to terminate Maintenance services in the event that (A) Client fails to pay invoices for Maintenance, or (B) Cerner's third party Maintenance suppliers refuse to provide Maintenance services to Client. All unpaid charges for Maintenance shall become immediately due and payable upon such termination. Client will pay all applicable penalties or fees if Maintenance services are terminated, then later reinstated.

7 PAYMENTS

7.1 Terms for Payment. Client will pay Cerner all amounts due under this Agreement (as stated in UAE dirhams ("AED") as follows:

A. System Acquisition. Client will pay each System's purchase price, license/sublicense fees, and all other amounts listed on a Cerner System Schedule at the times set forth therein.

B. Professional Services. Client will pay for Cerner's professional services as set forth in the applicable Project Agreement or Arrangement Letter.

C. Support and Maintenance. Cerner will invoice Support and Maintenance fees annually, in advance on the Effective Date and, thereafter, the anniversary of the Effective Date, unless other payment arrangements have been agreed upon by both parties. Charges for a partial quarter's service shall be prorated on a daily basis.

D. Additional Products. One hundred percent (100%) of the total fees for Licensed Software purchased as Additional Products and associated installation fees shall be invoiced and payable upon installation. One hundred percent (100%) of the total fees for Equipment and Sublicensed Software purchased as Additional Products and any applicable installation fees shall be invoiced and payable upon shipment of Equipment and Sublicensed Software.

E. Other Charges. Cerner will invoice all other charges and fees (such as Cerner's travel and temporary living expense reimbursements, fees for additional services and similar items) monthly following the date incurred.

F. General. Client will pay all invoices within thirty (30) days following their receipt by Client. Client will also pay a finance charge on all undisputed amounts that are more than forty-five (45) days past due at a rate of interest equal to the lesser of one and one-half percent (1.5%) per month or the maximum permissible legal rate. Client will also reimburse Cerner for reasonable collection costs, including attorney's fees, relating to the collection of any such past due amounts. If (1) invoices for professional services fees and/or related expenses are not paid by Client within ninety (90) days of the invoice or (2) Client is in default under its agreement with a third party financing company with whom Cerner has a contractual relationship, Cerner may suspend its performance of such services under the applicable Project Agreement(s) according to the relevant terms of Paragraph 4.3 above.

7.2 Taxes. Client will pay all taxes imposed in conjunction with this Agreement to tax authorities in Client's location, including, but not limited to sales, use, excise and similar taxes based on or measured by charges payable under this Agreement and imposed under authority of federal, state or local taxing jurisdictions, but excluding foreign, federal, state and local taxes based upon Cerner's net income or corporate existence. All such amounts shall be detailed to Cerner in writing. If tax exempt, Client will provide to Cerner a copy of its sales tax exemption certificate.

7.3 Cerner Reimbursable Expenses. The cost of all travel and temporary living expenses related to this Agreement shall be the sole financial responsibility of Cerner unless otherwise agreed in a specific Cerner System Schedule or Arrangement Letter.

7.4 Assignment of Payments. Client acknowledges and agrees that Cerner may assign its interest in or otherwise grant a security interest in payments due pursuant to this Agreement in whole or in part to an assignee. Cerner will continue to perform its obligations under this Agreement to Client following such assignment or granting of a security interest. Client hereby consents to and shall acknowledge every such assignment or granting of a security interest as shall be designated by written notice given by Cerner to Client.

7.5 Letter of Credit. Client agrees to issue a letter of credit at their sole expense from a bank that will be mutually agreed to by the parties. This letter of credit shall be sufficient to cover any and all payments dues under this Agreement, including but not limited to Licensed Software license and Support fees, professional services, subscription services, Equipment, or Sublicensed Software, all as set forth in the applicable Cerner System Schedules. The following language must be included in the letter of credit.

In accordance with the provisions of the conditions of (insert schedule or agreement name) under master agreement signed XXXX date with (*CLIENT'S NAME)*, hereinafter called "the Client" and Cerner Middle East FZ-LLC, hereinafter called "Cerner", the Client shall post a letter of credit in the amount of _________ as security for compliance with its payment obligations in accordance with the aforementioned schedules and agreements. We, (insert name of bank), as instructed by the Client, hereby affirm, unconditionally and irrevocably, that we are the guarantor and responsible to you on behalf of the Client for an amount not exceeding the total of the following amounts and payable on the following dates as listed below. We undertake to pay Cerner on Cerner's first written demand for the sum specified below on or after the dates specified below and without any right of objection on our part. We further agree that no change or addition or other modifications of the terms of the agreement or any of the agreement documents which may be made between the Client and Cerner shall in any way release us from any liability under this guarantee unless agreed by Cerner, and we hereby waive notice of any such change, addition, or modification. This letter of credit shall be valid until payment of the final payment listed below or as may be amended.

Amount:	*Date:*
(insert amount)	*(insert date)*
(insert amount)	*(insert date)*

If Client fails to maintain this letter of credit then, Cerner shall have the right to terminate this agreement, and all amounts due at that time or in the future under any executed Cerner System Schedule or Project Agreement shall be immediately payable by the client.

8 WARRANTY, INDEMNITY AND LIABILITY LIMITATION

8.1 Intellectual Property Warranty and Indemnity.

A. Cerner warrants that it has authority to grant Client licenses to use the Licensed Software described in this Agreement. Cerner also warrants that it will deliver the Licensed Software free from the rightful claims of any third party for infringement of U.S. patents, trademarks and copyrights. In the event of a breach of the foregoing warranties, Cerner will defend at its own expense, and will pay the costs and damages made in settlement or awarded as a result of, any action brought against Client based on an allegation of such infringement with respect to any item of Licensed Software, if Cerner is notified promptly by Client in writing of any such action or allegation of infringement, and if Cerner shall have had sole control of the defense of any such action and all negotiations for its settlement or compromise.

B. If an injunction is obtained against Client's use of any item of Licensed Software by reason of an infringement described above, or if in Cerner's opinion any item of Licensed Software is likely to become the subject of a claim of such infringement, Cerner will at its option and at its own expense procure the right for Client to continue using the item of Licensed Software which is the subject of the infringement claim, replace or modify such item so that it becomes non-infringing, or grant Client a refund of the applicable Licensed Software fee (calculated on a 5-year, straight line depreciated basis) in exchange for termination of any related license and the immediate return of such item of Licensed Software.

C. Cerner shall not have any obligation to Client under any provision of this Paragraph 8.1 if the infringement claim is based upon the use of any item of Licensed Software in combination with any software program or equipment, or any part thereof, not furnished or recommended in writing by Cerner, or the use of Licensed Software in a manner or environment, or for any purpose, for which Cerner did not design or license it.

D. CLIENT'S RIGHTS UNDER THIS PARAGRAPH 8.1 CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY AND CERNER'S SOLE AND EXCLUSIVE OBLIGATIONS WITH RESPECT TO ANY INFRINGEMENT OF ANY PROPRIETARY RIGHTS OF ANY THIRD PARTY CLAIMED BY VIRTUE OF ANY USE BY THE CLIENT OF THE LICENSED SOFTWARE.

8.2 Functionality Warranty. Cerner warrants that, beginning on the date of First Productive Use and extending for as long as Client (a) remains continuously on Support and (b) is operating the most current or next to most current New Release, the Licensed Software will, without Material Error, perform the functions set forth in the Product Descriptions when operated in accordance with the Documentation. In the event of a breach of this warranty, Cerner will repair or replace the failing item of Licensed Software so that it performs in accordance with such warranty. If, however, after repeated efforts (not to exceed six months from the date Cerner receives written notice from Client concerning the warranty breach), Cerner is unable to repair or replace the failing item of Licensed Software so that it performs in accordance with such warranty, Client may, at Cerner's expense, return the failing item of Licensed Software and receive a refund of the item's license fee (calculated on a 5-year straight line depreciated basis), as well as the item's Support fees paid since the failure was first reported to Cerner.

CLIENT'S RIGHTS UNDER THIS PARAGRAPH 8.2 CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY AND CERNER'S SOLE AND EXCLUSIVE OBLIGATIONS WITH RESPECT TO ANY BREACH OF THIS WARRANTY.

8.3 Disclaimer of All Other Warranties. The warranties contained in this Agreement extend to and are for the benefit of Client only. They do not extend to any subsequent purchaser, sublicensee, licensee or assignee, whether such is permitted by Cerner or not. Cerner makes no representations or warranties concerning either the Equipment or the Sublicensed Software (or other programs supplied to Client by Cerner and which are directly licensed to Client by a third party, or which are supplied by a third party to Client), nor does Cerner undertake any further obligations whatsoever. THE FOREGOING WARRANTIES ARE IN LIEU OF, AND CERNER HEREBY EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT WITH RESPECT TO ANY AND ALL PRODUCTS OR SERVICES (OR PORTIONS THEREOF) PROVIDED HEREUNDER.

8.4 Cerner Indemnity. Cerner agrees to defend, indemnify and hold Client and its officers, directors, employees and agents harmless from and against any and all third party claims, liabilities, obligations, judgments, causes of actions, costs and expenses (including reasonable attorneys' fees) arising out of the use of the System by Client so long as Client has used the System in accordance with the Documentation and applicable standards of good clinical practice, and to the extent the proximate and direct cause of the event giving rise to a claim for indemnification is Cerner's negligence in designing the Licensed Software.

8.5 Client Indemnity. Client agrees to accept responsibility from the date of First Productive Use for the use and results from the System. Client also agrees to defend, indemnify and hold Cerner and its officers, directors, employees and agents harmless from and against any and all third party claims, liabilities, obligations, judgments, causes of actions, costs and expenses (including reasonable attorneys' fees) arising out of the use of the System by Client; provided however, that the foregoing indemnity shall not apply if Client has used the system in accordance with the Documentation and applicable standards of good clinical practice, and where the proximate and direct cause of the event giving rise to the claim for indemnification is Cerner's negligence in designing the Licensed Software.

8.6 Limitation of Liability. IN NO CASE SHALL CERNER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY. SUCH EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, LOSS OF PROFITS, LOSS OF SAVINGS OR REVENUE, LOSS OF USE OF THE EQUIPMENT, SUBLICENSED SOFTWARE, LICENSED SOFTWARE, OR THE SYSTEM OF WHICH THEY ARE PART, OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME, THIRD PARTY CONSEQUENTIAL DAMAGES, AND INJURY TO PROPERTY. To the extent that any third party pass-through provisions contain liability limitations with respect to Equipment, Sublicensed Software and Maintenance, such limitations state the total maximum liability of Cerner (and then only to the extent that Cerner can collect from the supplier for Client's benefit) and each supplier with respect to Equipment, Sublicensed Software and Maintenance. Notwithstanding any other provision herein, Cerner's maximum liability for any claim or series of related claims arising under this Agreement shall be limited to the amount paid by Client to Cerner, during the twelve (12) month period preceding the event giving rise to the action, for the Licensed Software affected by or related to such claim(s) and the associated Support.

8.7 Force Majeure. Except for obligations to pay money where the other party has performed the service or delivered the product to which payment relates, neither party shall be responsible for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control, including but not limited to failure by Cerner's suppliers and subcontractors to furnish equipment, software, parts or labor, war, sabotage, insurrection, riots, civil disobedience and the like, acts of governments and agencies thereof, labor disputes, accidents, fires or acts of God. In such event, the delayed party shall perform its obligations hereunder within a reasonable time after the cause of the failure has been remedied, and the other party shall be obligated to accept such delayed performance.

8.8 Limitation on Actions. Neither party may bring any action arising out of any transaction (other than failures to pay) under this Agreement more than one year after such cause of action accrues.

9 GENERAL PROVISIONS

9.1 Term of Agreement. This Agreement shall commence on the Effective Date and remain effective until either party terminates this Agreement as set forth in Paragraph 9.2 below.

9.2 Termination Rights:

A. Termination by Client.

9.2.A.1 Client may terminate this Agreement if Cerner materially breaches this Agreement. If Client elects to terminate this Agreement, Client shall send a notice of termination specifying each breach with reasonable specificity and this Agreement shall be terminated thirty (30) days following delivery of such notice unless during such thirty day period (a) Cerner shall have cured each such breach, or (b) with respect to a breach which may not reasonably be cured within such thirty day period, Cerner shall have commenced, be diligently pursuing cure of and shall cure such breach as soon as practical.

9.2.A.2 Following termination, Cerner will, at Client's request, cooperate with Client for a reasonable period of time not to exceed twenty-four (24) months to allow Client to convert its information systems to another vendor. During such period Client may continue to use any Licensed Software that has reached First Productive Use prior to receipt of notice of termination and Client shall pay to Cerner on a monthly basis (a) Support and Maintenance fees, (b) professional services fees, and (c) any out of pocket expenses incurred. Upon conversion by Client to another information system, Client shall immediately cease using and return to Cerner all copies of the Licensed Software and Sublicensed Software.

(iii) CLIENT'S RIGHTS UNDER THIS PARAGRAPH 9.2.A CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY AND CERNER'S SOLE AND EXCLUSIVE OBLIGATIONS WITH RESPECT TO ANY MATERIAL BREACH BY CERNER.

B. Termination by Cerner. Cerner shall have the right (without further obligation or liability to Client) to terminate this Agreement, any Cerner System Schedule, and any related license if (1) Client breaches Paragraphs 1.2, 1.3 or 9.8, (2) Client becomes more than thirty (30) days delinquent in paying any sums which are due Cerner and which are not the subject of a good faith dispute, (3) Client causes a delay in the project timeline or milestones set forth in the applicable Project Agreement that exceeds one hundred eighty (180) days or (4) Client is in default in its payments to the third party financing company that has a contractual relationship with Cerner. No such termination shall occur, however, until Client first receives prior written notice and a 30-day cure period with respect to such delinquency or violation. Upon termination, Client shall immediately return or destroy all copies of the Licensed Software and certify to Cerner in writing concerning such return or destruction.

9.3 Arbitration and Injunctive Relief. In the event of a dispute between the parties, Cerner and Client agree to work cooperatively to resolve the dispute amicably at appropriate, mutually determined management levels. In the event that a resolution at such management levels does not occur and a party wishes to escalate to a formal dispute resolution forum, such party shall submit the dispute to binding arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect ("the ICC Rules"), as modified by the provisions of this Section 9.3. The seat of the arbitration shall be Paris, France and the language of the arbitration shall be English. The arbitrator shall have the authority to determine whether any such dispute is properly subject to resolution by arbitration. Judgment upon any award in such arbitration may be entered and enforced in any court of competent jurisdiction. Notwithstanding any provision of this Agreement to the contrary, Client acknowledges that any breach of Client's obligations with respect to Cerner's proprietary rights will result in an irreparable injury for which money damages will not be an adequate remedy and that, in such event, Cerner shall be entitled to injunctive relief in addition to any other relief a court may deem proper.

9.4 Availability of Records. Until the expiration of four (4) years after the furnishing of services under this Agreement, Cerner agrees that the Secretary of the Department of Health and Human Services (the "Secretary") and the Comptroller General of the United States, or the designee or duly authorized representative of either of them, shall have access to all books and records of Cerner pertaining to the subject matter of this Agreement and the provision of services under it, in accordance with the criteria presently or hereafter developed by the Department of Health and Human Services as provided in Section 952 of the Omnibus Reconciliation Act of 1980 (the "Act"). Upon request of the Secretary, the Comptroller General, or the designee or authorized representative of either of them, Cerner shall (at reasonable times and places during normal business hours) make available this Agreement, and all books, documents and records of Cerner that are necessary to verify the nature and extent of the costs of the services provided by Cerner furnished in connection with this Agreement. Notwithstanding the foregoing provisions, the access to the books, records and documents of Cerner and any related organization provided for herein shall be discontinued and become null and void upon a finding by a court or quasi-judicial body of competent jurisdiction that this Agreement is outside the scope of the regulatory or statutory definition of those contracts and agreements included within the purview of Section 952 of the Act or the rules and regulations promulgated thereunder.

9.5 Regulatory Bodies. Client and Cerner agree to cooperate fully with each other in satisfying any requirements of regulatory bodies with respect to the System as used by Client. Client agrees that prior to making First Productive Use of the System, Client will perform whatever tests it deems necessary to verify and certify that the System, as used by Client, complies with all governmental, accrediting, and professional regulatory requirements which are applicable to use of the System in Client's environment. Cerner and Client shall notify each other promptly concerning any inspections or other contacts by regulatory bodies with respect to the System.

9.6 Information Management Tools. Client acknowledges and agrees that the Licensed Software and System furnished by Cerner are information management tools only and that they contemplate and require the involvement of Client's learned intermediaries. Client further acknowledges and agrees that Cerner has not represented its System as having the ability to diagnose disease, prescribe treatment, or perform any other tasks that constitute the practice of medicine or of other professional or academic disciplines. In addition, all Content has been developed and reviewed by Cerner based upon published data and the experiences of qualified professionals whenever possible; however, it is Client's responsibility to validate all Content against its standard operating procedures, and all federal, state and local regulations. Cerner shall not be responsible for any errors, misstatements, inaccuracies, or omissions in the Content delivered to Client, although every effort has been made to ensure its quality and accuracy. Client assumes all risk for selection and use of the Content. Client acknowledges that Cerner: (a) has no control of or responsibility for the Client's use of the Content, (b) has no knowledge of the specific or unique circumstances under which the Content provided may be used by the Client, and (c) has no liability to any person or entity for any change made to or data or information added to the Content by the Client or any party other than Cerner.

9.7 Work Product. All Work Product is and will remain the sole and exclusive property of Cerner. Cerner may use such Work Product for internal purposes as well as for other clients so long as Cerner does not use any Confidential Information belonging to Client. To the extent any Work Product is requested for the use of the System, Cerner hereby grants to Client a non-exclusive, non-transferable license to use the Work Product supplied to Client by Cerner for Client's own internal purposes solely in conjunction with the System, and for no other purpose whatsoever.

9.8 Confidentiality. Except as expressly permitted by this Agreement, Cerner and Client will not, nor will they permit their respective employees, agents, attorneys or independent contractors to, disclose, use, copy, distribute, sell, license, publish, reproduce or otherwise make available Confidential Information of the other party. Cerner and Client will each (a) secure and protect the other party's Confidential Information by using the same or greater level of care that it uses to protect its own confidential and proprietary information of like kind, but in no event less than a reasonable degree of care, and (b) advise each of their respective employees, agents, attorneys and independent contractors who have access to such Confidential Information of the terms of this Paragraph 9.8. Notwithstanding the foregoing, either party may disclose the other party's Confidential Information to the extent required by applicable law or regulation, including without limitation any applicable Freedom of Information Act or sunshine law, or by order of a court or other governmental entity, in which case such party will so notify the other party as soon as practicable and in any event at least thirty (30) days prior to such party making such required disclosure. Upon execution of this Agreement and subject to the terms and conditions set forth in Exhibit B, Cerner agrees to grant to Client licensed access to restricted portions of Cerner.com. Cerner.com contains certain copyrighted and proprietary and confidential information.

9.9 Access to Data. Client grants to Cerner an irrevocable, nonexclusive, perpetual, world-wide, royalty-free right and license to use all Data (with Obvious Identifiers removed) for any purpose permitted by law, including, without limitation, (i) analysis and incorporation of the Data in databases, reports, comparative data sets, scores or scoring systems generated there from; and (ii) creation and distribution of works and derivative works based on the Data. Any Data that contains an element that by itself, or in combination with any other data elements allows re-identification of a person, is considered Confidential Information under this Agreement. Cerner shall provide, install, and support the tools to perform the data extraction of Data that is collected, stored or generated through the use of the Licensed Software without charge. Client agrees to provide the technical and communications infrastructure required to temporarily store and send the extracted Data by mutually acceptable electronic means.

9.10 Notices. Any and all notices, requests, demands or other communications which relate to the other party's failure to perform or which otherwise affect either party's rights under this Agreement shall be deemed properly given when furnished by receipted hand-delivery to the other party, deposited with an express courier, or deposited with the U.S. Postal Service (postage prepaid, certified mail, return receipt requested) or similar services offered by Emirates Post as applicable. Except in situations involving hand-delivery, the sender shall address all notices, requests, demands or other communications to the recipient at the address below.

If to Client, the communication shall be sent as follows:

iCapital
PO Box 37148
Abu Dhabi
United Arab Emirates
Attention: Amro Al Deeb, CEO

If to Cerner, the communication shall be sent as follows:

Cerner Middle East, Ltd.
2800 Rockcreek Parkway
Kansas City, Missouri 64117 U.S.A.
Attention: ____________________

9.11 Amendment. This Agreement may not be amended, modified, qualified or otherwise changed or altered except by a writing executed by the Client and by the Chairman of the Board, Chief Executive Officer, President, Chief Financial Officer, Secretary, or any Executive Vice President or Senior Vice President of Cerner.

9.12 Binding Effect. This Agreement is binding upon and will inure to the benefit of the parties and their respective successors.

9.13 Change of Product Line and System. Cerner may at any time add, delete, or change the specifications with respect to products comprising Cerner's product line and System (but in no case shall such change reduce the overall functionality of same), and neither Client nor any third party shall have any claim against Cerner with respect to such modification.

9.14 Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Missouri, excluding Missouri's rules on conflict of laws that would apply the substantive law of another jurisdiction.

9.15 Severability and Effect of Laws. The provisions of this Agreement shall obligate the parties only to the extent that such provisions are lawful. Any provision of this Agreement which is prohibited by law shall be ineffective (but only to the extent that, and in the locations where, such prohibition shall be applicable). The remainder of the Agreement shall remain in full force and effect, provided, however, that both parties agree the Agreement can continue to be performed in furtherance of the Agreement's original objectives.

9.16 Assignment. Except as set forth below, neither party may assign this Agreement or the licenses and privileges granted under it, nor may either party delegate his duties with respect to it. Cerner may, however, assign and delegate in conjunction with a reorganization or merger, or in conjunction with the sale of substantially all its assets to which this Agreement pertains, or in conjunction with any other assignment or transfer to which Client consents in writing. Similarly, Client may assign and delegate in conjunction with a reorganization or merger or in conjunction with the sale of substantially all its assets to which this Agreement pertains, or in conjunction with any other assignment or transfer to which Cerner agrees in writing. Notwithstanding the foregoing, in all circumstances the transfer or assignment by either party to a competitor of the other party shall not be undertaken without the written consent of the other party. Any assignment of this Agreement, by Client or Cerner, must be made in its entirety, including all rights and obligations.

9.17 Prior Agreements. This Agreement constitutes the entire agreement of the parties with respect to acquisition and use of the System. Any prior or contemporaneous agreements or understandings between the parties with respect to the acquisition and use of the System are hereby terminated and superseded by this Agreement.

9.18 Cerner System Schedules. Client agrees that once the parties have executed a Cerner System Schedule, neither party may delete or substitute Equipment or Sublicensed Software without the other party's agreement. Client may not delete Licensed Software and may only substitute a line item of Licensed Software with Cerner's approval.

9.19 Survival. The following paragraphs shall survive termination of this Agreement: 1.2 (Scope of Use), with respect to return or destruction of all licensed materials and with respect to Cerner proprietary rights; 1.3 (Protection of Licensed Software); 2.5 (Pass Through Provisions); 7.1 (Terms for Payment); 7.2 (Taxes), 7.3 (Cerner Reimbursable Expenses), but only with respect to payments, taxes and expenses accruing or incurred prior to termination; 8.1 (Warranty and Indemnity Regarding Licensed Software); 8.3 (Cerner Disclaimer of All Other Warranties); 8.4 (Cerner Indemnity); 8.5 (Client Indemnity); 8.6 (Cerner Limitation of Liability); 8.7 (Force Majeure); 8.8 (Limitation on Actions); 9.2 (Termination Rights); 9.3 (Arbitration and Injunctive Relief); 9.4 (Availability of Records); 9.5 (Regulatory Bodies); 9.6 (Information Management Tools); 9.7 (Work Product); 9.8 (Confidentiality); 9.10 (Notices); 9.14 (Governing Law); and 9.20 (No Hire).

9.20 No Hire. Cerner and Client agree that, without the prior consent of the other party, neither will offer employment to or discuss employment with any of the other parties' associates or employees until one year after this Agreement is terminated.

9.21 Waiver. All waivers of and consents to any terms and conditions of this Agreement (or any rights, powers or remedies under it) by either party must be in writing in order to be effective. No waiver or consent granted with respect to one matter or incident shall be construed to operate as a waiver or consent with respect to any different or subsequent matter or incident.

9.22 Purchase Orders. If Client submits its own form of purchase order to request Licensed Software, Sublicensed Software, Equipment and/or professional services, any and all terms and conditions which may appear on such purchase order are of no force or effect and shall be superseded by the terms and conditions of this Agreement.

9.23 Revocation of Offer. Client understands that Cerner may revoke this offer of contract at any time prior to its execution by Client.

9.24 Project Language. Parties agree that all correspondence and communication related to this Agreement and its performance, including in particular all correspondence and communication of professional services teams (as for example interim project reports, project plans or similar) will be in English. The resources deployed by Client for performance of this Agreement shall have sufficient competency in speaking and writing English. Also parties agree that it will be sufficient that all documentation required to be provided by Cerner during performance of this Agreement will be in English. If Arabic language documents are required, Client will take care of accordant translation on own expense.

9.25 Co operational Obligations. The Client and Cerner shall work together in trustworthy partnership toward the objectives agreed upon in this Agreement. The Client will support Cerner to an appropriate and necessary degree at any time. In particular, but not limited to the following:

A. The Client shall make all necessary project related decisions in accordance with the contractually stipulated decision-making deadlines or periods and shall report all such decisions to Cerner.

B. The Client shall provide Cerner with all data and information needed by Cerner to provide its services, and shall provide Cerner with the names of all internal and external contact persons capable to provide binding project input.

C. The Client will also inform Cerner about relevant program environments, as well as about possible relevant norm changes. If there are special legal or operational safety regulations while working in the Client's or UAE MoH's facilities, the Client will inform Cerner of such adequately before the work begins.

D. The Client will procure and maintain an appropriate project steering organization that can provide explanations and make decisions relevant to the program and project. The Client shall procure in the Prime Contract that the UAE MoH establish, maintain, and adhere to strict and timely project governance/steering bodies and mechanisms that are empowered to make all decisions and provide all input needed by Cerner relevant to the program and project. Any such body or mechanism in the Prime Contract shall be agreed to prior to its inclusion by Cerner and shall have the make-up and responsibilities noted in Exhibit C.

E. The Client shall procure in the Prime Contract that the UAE MoH will procure available qualified resources to the degree necessary who in particular can answer discipline-specific question and can give necessary information to Cerner regarding the realization of the project.

F. The Client shall procure in the Prime Contract that the UAE MoH will procure and maintain the organizational and technical basis necessary for the execution of the project and the operation of the solutions (appropriate network, cooling systems, emergency electrical power suppliers, hardware infrastructure, system-related software, and system environment, etc.).

G. The Client will procure the necessary licenses for the software of the base system as long as it is not delivered directly by Cerner

H. The Client shall procure in the Prime Contract that UAE MoH will perform regular backups of data stored on systems to prevent loss of data

I. The Client shall and shall procure in the Prime Contract that the UAE MoH will support Cerner as much as possible and to best of their capacity when trying to locate the cause of occurring errors by reporting significant information and submitting relevant documents for fixing errors. This includes the collaboration of their resources with those of Cerner.

J. During normal operation, the Client shall and shall procure in the Prime Contract that the UAE MoH will operate the system according to usual standards and attend to administrative tasks in order to identify errors and defects in advance.

K. The Client shall and shall procure in the Prime Contract that the UAE MoH will provide the associates of Cerner access to the systems, insofar as this is required for providing services and ongoing support of the System.

L. The Client will support Cerner and their subcontractors with processing insurance cases and in defending against unlawful charges from third parties.

M. The Client will support Cerner in acquiring all required, project-relevant authorizations and approvals from third parties.

N. The Client shall and shall procure in the Prime Contract that the UAE MoH will ensure that the required personnel are present for testing and training on the agreed upon dates.

O. The Client shall and shall procure in the Prime Contract that the UAE MoH will provide adequate technical requirements for the use of efficient remote maintenance access including Intellinet access as noted on Exhibit A.

P. The Client shall and shall procure in the Prime Contract that the UAE MoH will provide Cerner access to space necessary for providing services at the UAE MoH sites.

Q. The Client shall not prevent Cerner from direct communication with the UAE MoH provided that Cerner keeps Client well informed of such communications and such communications are neither against the best interest of the client nor against the best interest of the common objectives, clauses or commitments set forth in this agreement.

R. Cerner warrants that throughout the period of this agreement, it shall not directly solicit offers to sell related additional software or services to UAE MoH or any permitted facility without the consent of the Client, and any such price offers and/or sales quotes will be quoted through the Client only, unless UAE MoH or one of its representatives requests to conduct business relations directly with Cerner. If the UAE MoH requests to conduct business relations directly with Cerner, Cerner will notify Client and make reasonable best efforts to include client in discussions.

The Client understands and agrees that cooperating with Cerner is of crucial importance for successful performance of this Agreement and that failing to meet co operational obligations will exclude the right to claim any damages or breach whatsoever against Cerner.

9.26 The Client is explicitly agreeing that Cerner may bring in further subcontractors to fulfill obligations of this Agreement.

These will include but may not be limited to the following:

Vision Software Technologies (VST)
Wyndgate
Kronos
Gulf Business Machines

10 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

10.1 **Additional Products** means items of Licensed Software, Sublicensed Software or Equipment (or any combination thereof) which constitute less than a full System and which Client acquires from Cerner for use with a System previously acquired from Cerner.

10.2 **Agreement** means this Basic Terms and Conditions document (comprised of Articles 1 through 10), the signature page, Exhibits, Cerner System Schedule(s), Project Agreement(s) any amendments to any of the foregoing.

10.3 **Arrangement Letter** means the document signed by both Cerner and Client identified as an Arrangement Letter and setting forth the work effort, deliverables, responsibilities and associated fees for services that are outside the scope of work originally identified in a Project Agreement.

10.4 **Cerner System Schedule(s)** means all the document(s) setting forth the item(s) of the System being purchased by Client, scope of use, pricing, payment terms and any other relevant terms.

10.5 **Confidential Information** means all technical, business, financial and other information that is disclosed by either party to the other, whether orally or in writing, all individually-identifiable patient information, information relating to the status of installation or Implementation of a Project, any disputes or disagreements between the parties, and all the terms and conditions of this Agreement (and the substance of the negotiations leading to it), all Cerner pricing information, the System, Work Product and all non-publicly available information related to Cerner products, services and/or methodologies. "Confidential Information" will not include any information (a) that is publicly available through no breach of this Agreement by Client or Cerner, (b) that is independently developed or was previously known by Client or Cerner, or (c) that is rightfully acquired by Client or Cerner from a third party not under an obligation of confidentiality.

10.6 **Content** means the knowledge-based healthcare assessments and clinical pathways, medical vocabularies, rules, alerts and insights provided by Cerner and listed on a Cerner System Schedule.

10.7 **Data** means all (a) data that is collected, stored, or generated through the use of the Licensed Software and (b) Cerner-requested data that is not collected, stored, nor generated through the use of any Licensed Software, in each case requested by Cerner and subsequently transmitted to, or retrieved by Cerner for storage.

10.8 **Designated Facility** means the Client location identified on a Cerner System Schedule that will house the data center Equipment and the host Licensed Software.

10.9 **Documentation** means the printed and on-line materials that assist Client in using the System, as updated from time to time.

10.10 **Effective Date** means the date this Agreement becomes effective, as set forth on the signature page.

10.11 **Equipment** means all equipment and related components listed on a Cerner System Schedule.

10.12 **First Productive Use** means Client's first use of an item of Licensed Software to send patient, health plan or materials information for clinical, financial or operational use.

10.13 **Implementation** means the process by which the Licensed Software is optimized for use in Client's clinical, financial and administrative environment.

10.14 **Licensed Software** means the machine readable forms of specific computer software programs developed by Cerner and identified in a Cerner System Schedule or Arrangement Letter, and all items of Documentation supplied by Cerner with respect to the computer software program portion of the Licensed Software. It also includes any New Releases to the Licensed Software, as well as any Cerner-developed Content. "Licensed Software" shall not include source code of any kind, nor shall it include Sublicensed Software or any program licensed to Client by any third party.

10.15 **Maintenance** means the services provided to Client pursuant to Paragraphs 6.2 and 6.3 of this Agreement.

10.16 **Material Error** means either an error that adversely affects operation of the entire System in a material manner or that creates a serious loss of functionality important in the daily operation of a single module (e.g., Blood Bank) and for which a work around is not available.

10.17 **New Release** means the distinctly identified (e.g. Release HNAM.20XX.01 for Millennium products), comprehensive collection and packaging of Licensed Software and supporting documentation components at a distinct point in time within a product's life cycle that Cerner makes generally commercially available.

10.18 **Obvious Identifiers** means the following patient information including: patient names, street addresses, telephone numbers, facsimile numbers, e-mail addresses, social security numbers, device implant identifiers or serial numbers, full face photographic images, and certificate/license numbers (patient).

10.19 **Permitted Facility** Permitted facility means a specific, physical location identified as such in a Cerner System Schedule for which Cerner will provide Implementation services that is a) at least 50% owned by the UAE MoH and/or b) the UAE MoH has the right to determine such facilities management direction.

10.20 **Product Descriptions** means the document describing the features and functions of the Licensed Software for the applicable New Release.

10.21 **Project** means the mutually agreed upon activities, timelines, responsibilities and deliverables relating to an Implementation project and detailed in a Project Agreement.

10.22 **Project Agreement** means a document executed by both Cerner and Client that sets forth the scope, work effort, Cerner and Client responsibilities, and fees for professional services during any phase of a project.

10.23 **Sublicensed Software** means all third party software and/or content listed on a Cerner System Schedule.

10.24 **Support** means Cerner's ongoing effort to keep the Licensed Software in working order or to sustain the useful life of the Licensed Software, including technical services which require contact with Client or its Users of the Licensed Software in person, via electronic mail or telephone, in order to help Client resolve a problem that such Client has reported, all as more fully described in Exhibit A.

10.25 **System** means the Equipment, Sublicensed Software and Licensed Software listed on a Cerner System Schedule and which collectively constitute a discrete product that addresses a major area of clinical information management. For example, the PathNet product for laboratory, the RadNet product for radiology, and the PharmNet product for pharmacy (and their related Equipment and Sublicensed Software) would each constitute a System, while the Anatomic Pathology or Blood Bank modules and their related Equipment and Sublicensed Software would not.

10.26 **UAE Holiday** means New Year's Day (1 January), UAE National Day (2 December) and any other day declared a holiday for the government of the United Arab Emirates or of the Emirates of Sharjah, Ajman, Umm Al Qawain, Ras Al Khaimah, or Fujairah.

10.27 **User** means an individual person with a unique password and sign-on ID for access to the System.

10.28 **Work Product** means any customized or custom computer software programs, documentation, techniques, methodologies, inventions, analysis frameworks, software, or procedures developed, conceived or introduced by Cerner in the course of or as the result of Cerner performing professional services, installation services, Implementation services, issue resolution or other Support services, whether acting alone or in conjunction with Client or its employees, affiliates or others.

EXHIBIT A

DESCRIPTION OF SUPPORT SERVICES

The following table provides a high level description of the benefits and services received through the payment of Licensed Software Support fees:

1	Immediate Response Center ("IRC")	Cerner's support center that is staffed twenty four hours a day and seven days a week for the purpose of addressing and resolving client mission critical issues
2	Immediate Answer Center ("IAC" or "Service Center")	Cerner's support center that is available for non-mission critical problem determination, resolution, or identification of alternatives through consultative assistance on solution functionality.
3	Client Care Team	Cerner's support center that is available for training, Cerner events, financial and quote information.
4	IntelliNet (secured access mechanism)	A data communications mechanism that facilitates problem resolution at the client site (secure and efficient method for service and support).
5	Revisions, Releases and Upgrades	Software revisions, releases and updates that deliver increased functionality over time and allow software to remain current with various technologies.
6	Knowledge transfer during service events	Education provided to Client's personnel during problem resolution leading to greater client self-sufficiency.
7	Service Escalation Process	Defined process for any client to escalate an issue (whenever the client feels a service or support issue is not being addressed) to receive executive management focus.
8	Complete Service Record	Complete client service record identifying service issues, history, trends, and patterns.
9	On-Line Demographic Profile (Solution/technical attributes)	Knowledge of client technical environment, supporting an efficient and effective problem resolution process (assumes hardware and Sublicensed Software Maintenance through Cerner).
10	Catalog of Services	On-line access via Cerner.com to Cerner's Catalog of Services referencing and describing all of Cerner's services.
11	Telephone, e-mail, internet	For the convenience of Client, Cerner offers multiple avenues of communication for support requests and for support services.
12	Cerner.com	Internet access to solution documentation, communities of interest, announcements, on-line service request entry and the ability to review service activity.
13	Proactive Solution and Service Flashes	Advance information concerning new solutions, upcoming corrections, patches, add-ons, etc.
14	Access To Cerner Direct	Access to a direct channel for ordering technology with 24-hour turnaround with discounted and/or competitive pricing through Cerner.com or the Cerner Direct Order Desk.
15	Access to Cerner Virtual University	Information about Cerner product and technology education via Cerner's Virtual University.
16	Regulatory Affairs Services	Consultative service on regulatory affairs.
17	Client Satisfaction Surveys	Client satisfaction survey process providing a feedback mechanism

Cerner is constantly improving and revising the content and delivery of its Support services to better meet the needs of clients, therefore, more specific details concerning the above services are set forth in Cerner's Catalog of Services available on Cerner.com.

EXHIBIT B

CERNER.COM RESTRICTED ACCESS AGREEMENT

1. Client agrees to protect and to keep in the strictest confidence all information and materials to which Client is granted access through Cerner.com "Client-only" access (the "Confidential Information"), except for information which is clearly sales, marketing, or other information available without restriction to the general public. Client shall use the Confidential Information only for the purpose of supporting or otherwise facilitating its permitted use of the Licensed Software and System(s) identified in the Cerner Business Agreement, and for no other purpose whatsoever.

2. Client shall designate and identify to Cerner those employees, agents, or other such representatives of Client, which Client desires to have access to the Confidential Information. Client agrees to limit access to Confidential Information to such individuals as have a need to know or have need to access the information in order to increase their understanding or efficient use of Cerner products and services identified in the Cerner Business Agreement. All such persons shall be under a confidentiality agreement with Client that is sufficient to protect the proprietary and confidentiality interests of Cerner, its vendors and its clients. No copies of the Confidential Information shall be made, except as necessary to facilitate Client's use of the Confidential Information as described above.

3. Client agrees to have in place, or implement if needed, appropriate policies, procedures, education, controls and internal audits necessary to assure Client's compliance with this agreement. Client understands that all persons who are granted access to the Confidential Information will be advised by Cerner of their obligation of confidentiality with respect to the Confidential Information. Nonetheless, Client agrees that it shall be responsible for any breach of this Confidentiality Agreement by any person who is given access to the Confidential Information to facilitate Client's use of the Licensed Software or System(s). Client further understands and agrees that its responsibility shall not be reduced or affected in any way by the advisement given to each person accessing such Confidential Information. Cerner reserves the right to terminate Client's and/or any of its personnel's access to Cerner.com at any time for any reason.

4. Client agrees to notify Cerner and Client's primary information services executive immediately upon learning of any loss of control, improper disclosure, or other misuse of any Confidential Information or other materials made available through Cerner.com, or of any password, logon procedure, or other method limiting access to Cerner.com. Further, Client agrees to take whatever steps are reasonably required to halt and otherwise remedy, if possible, any such breach of security, and to take all appropriate steps to regain control of the Confidential Information or such other information improperly disclosed or misused, and to prevent, as necessary, further disclosures or misuses.

5. Client shall not be liable to Cerner for disclosure of Confidential Information if: (a) the Confidential Information is or becomes public without the fault of Client, or (b) the Confidential Information was in Client's possession or was known by Client prior to Client's receipt of the Confidential Information from Cerner, or (c) the Confidential Information is or becomes available to Client from a source already in legitimate possession of said Confidential Information, said source being other than Cerner, or (d) the Confidential Information is developed independently by Client, or (e) the Confidential Information is disclosed for unrestricted release with the written approval of Cerner to whom it relates, or (f) Client is obligated to disclose the Confidential Information by order or regulation of any court or other governmental entity.

6. All personal passwords, logon procedures, or other methods having the effect to limit access that Cerner discloses to Client are designed to be of limited scope and are highly confidential in nature. Client agrees to exercise all necessary control over such information so as to avoid the possibility of its disclosure or other misuse. Further, Client agrees that no such information shall be shared with any other individual or organization unless Client is otherwise authorized to do so, in writing, by Cerner.

7. Information accessed through Cerner.com shall not be further transmitted, reproduced, or otherwise copied, in whole or in part, through or under any medium, for the benefit or use of any person, not otherwise permitted to receive or use such information, without first obtaining Cerner's written consent.

8. Client may, however, disclose the information to any person within Client's organization if necessary to facilitate Client's use of Licensed Software (or other Cerner products and services provided under agreement) to which the information relates so long as the party disclosing the information notifies the receiving party of the confidentiality of the information and of their obligation to comply with these confidentiality terms.

9. Due to the nature of Cerner's business and the value of Cerner's proprietary information, Client agrees that a breach of any of the provisions hereof may inflict serious harm on Cerner, and that termination of Client's license, if reasonable under the circumstances, and money damages may be inadequate relief. Accordingly, Cerner shall be entitled to injunctive relief to prevent or prohibit any threatened or continuing breach of any of the terms and provisions hereof and, in addition thereto, shall be entitled to any and all other remedies available at law or in equity.

EXHIBIT C

Governance

Committee and Team Responsibilities

Below are the Roles and Responsibilities for the different Committees and Teams. Committees are more integrated with representation from multiple teams and teams are more solution focused.

Executive Steering Committee

The Executive Steering Committee consists of executive level Client and UAE MoH personnel from clinical, operation, and IS departments and is responsible for overall project oversight and outcomes. They serve to ensure that the Cerner system will compliment the strategic vision of the institution and the anticipated benefits are being realized from the implementation efforts. The committee is typically the ultimate decision making mechanism to resolve issues related to the project. Client, UAE MoH, and Cerner executives who have responsibility for the implementation will attend the meetings of the committee. These sponsors lead by maintaining a sense of urgency and priority throughout the project. The executive sponsors meet biweekly in the first few months of the project and then every 4 weeks throughout the project. The Committee will be chaired by the UAE MoH Executive Sponsor. Where decisions are required immediately, the Executive Sponsor will be authorized to make decisions on behalf of the committee. The Executive Sponsor will be determined by the Client and UAE MoH.

Responsibilities

- Participate in project oversight for risk assessment, executive relationship management, and project status review
- Appoint project leaders
- Make and reinforce decisions in a timely manner
- Remove obstacles to ensure the project critical path is maintained
- Sets project priorities, determines goals, approves analysis and measurement methods, reviews progress, holds responsible parties accountable and determines rewards and recognition
- Serve as final escalation point for resolving strategic project related issues.
- Address major human resource and financial resource conflicts
- Evaluate project status from a strategic perspective
- Assist in the establishment and communication of guiding principles for success of the project. Communicate key strategies and tactics to meet organizational goals
- Prepare and continuously deliver the stump speech, a brief informative, slightly persuasive message about the project that highlights project benefits and an estimated conversion date
- Ensures adequate participation in solution demonstrations, design sessions, end user training sessions, and other critical project activities
- Provide leadership and support to the Advisory Groups
- Serve as champions to the project and recruit others throughout the organization to do the same

Project Steering Committee

The Project Steering Committee consists of key project leads that are responsible for overall progress and execution. They serve to ensure that the Cerner system will compliment the strategic implementation efforts and everything is on schedule. This group is typically the ultimate decision making mechanism to resolve issues related to the project.

Responsibilities:

• Monitor progress against the project plan, addressing reasons for delay or escalating to executive management for resolution. Provide status reports to Executive Steering Committee. Provide updates to Advisory Committees on an as needed basis.

• Participating in project oversight for risk assessment, executive relationship management, and project status review
• Appoint full time project leaders
• Make and reinforce decisions in a timely manner
• Remove obstacles to ensure the project critical path is maintained
• Oversee the benefits process, set priorities, determine goals, approve analysis and measurement methods, review progress, hold responsible parties accountable and determine rewards and recognition
• Serve as final escalation point for resolving strategic project related issues.
• Address major human and financial resource conflicts
• Evaluate project status from a strategic perspective
• Assist in the establishment and communication of guiding principles for success of the project. Communicate key strategies and tactics to meet organizational goals
• Provide leadership and support to the Advisory Groups
• Serve as champions to the project and recruit others throughout the organization to do the same

Physician Advisory Committee

The Physician Advisory Committee provides input into the direction of the project from the perspective of staff and affiliated physicians. The group is composed of individuals who represent thought and opinion leadership of the organization. Members must be able to invest sufficient time to assist with project design and key decisions affecting clinical practice. Members are also expected to provide clinical direction and guidance for the project and act as the voice of the physician. Since the members are a major communication channel to the rest of the organization, it is suggested that the group meet bi-weekly to ensure timely and thorough communication of project status and decisions. The group is chaired by the Physician Leader; however the Project Manager is typically responsible for preparation of the meeting materials.

Responsibilities

• Input into the localization of the Cerner system where required/recommended
• Approving the design of clinical and business process changes
• Providing input on deployment strategy and other key project decisions
• Communicate the project status and key decisions to medical staff
• Appoint physicians to test the Cerner system and processes to ensure usability
• Recommend and help implement changes to bylaws and policies pertinent to implementation of the Cerner system
• Drives standardization process across Enterprise
• Continuously message: a brief informative, slightly persuasive message about the project that highlights project benefits and an estimated conversion date
• Remove obstacles to ensure the project critical path is maintained
• Demonstrate commitment to the project by establishing and maintaining the project vision and participating in events and meetings continually
• Lead by example to stay the course
• Communicate key strategies and tactics to meet organizational goals
• Encourage participation by physicians in solution demonstrations, design sessions, end user training

sessions, and other critical project activities

- Serve as champions to the project and recruit others throughout the project to do the same

Clinical / Operational Advisory Committees

The Clinical Advisory Committee provides input into the tactical, operational, and clinical direction of the project. The group is typically composed of Client and UAE MoH operational management who has responsibility for the deployment of the Cerner system in one or more areas of the organization. The Advisory Committee provides clinical direction and guidance for the project and represents the interests of the clinicians that will be affected by implementation of the Cerner system. Since the members are a major communication channel to the rest of organization, the group must meet bi-weekly to ensure the timely and thorough communication of project status and decisions. The group is chaired by the Clinical and Operational Leaders; however the Project Manager often leads a significant portion of the meeting and is responsible for the preparation of the meeting materials. Advisory Committees will be needed for:

1. Revenue Cycle
2. Supply chain
3. Emergency Department
4. Surgery
5. Patient Management, EMR
6. Patient Scheduling ESM
7. Medications Process and CPOE
8. Nursing
9. Pharmacy
10. Standard (single) formulary across all enterprises
11. Standard (single) Order Catalog
12. Laboratory
13. Radiology and PACS

Responsibilities

- Provide project guidance and make clinical project decisions
- Input into the design, validation, and localization of the design of clinical systems
- Approve the design of clinical and business process changes
- Provide input on deployment strategy and other key project decisions
- Assist with communication of project status and key decisions to department management and staff
- Resolve clinical process and content issues associated with the Cerner system implementation
- Become very familiar with the Cerner system recommended processes, and content and advise on its localization and implementation in the facility
- Recommend and help implement changes to bylaws, policies and policies pertinent to implementation of the Cerner system
- Remove obstacles to ensure the project critical path is maintained
- Demonstrate commitment to the project by establishing and maintaining the project vision and participating in events and meetings continually
- Lead by example to stay the course
- Communicate key strategies and tactics to meet organizational goals
- Encourage participation by clinicians in solution demonstrations, design sessions, end user training sessions, and other critical project activities
- Serve as champions to the project and recruit others throughout the project to do the same

Education and Learning

The Education and Learning Team is part of the Transformation Team works under the direction of the Education Coordinator. It is accountable for adapting the Learning Plan and, developing training materials and delivering training to end users. This team consists of Trainers whose responsibilities are listed below:

Responsibilities

- Acts as a primary trainer pre- and post-conversion
- Promotes mutual support among colleagues and emphasizes knowledge sharing and success of the team
- Demonstrates effective teaching techniques
- Attends required training sessions and team meetings
- Assists with the identification, recruitment, training, and support of department-based super users pre- and post-conversion
- Complies with attendance tracking and competency documentation requirements
- Report issues identified in training and recommend the modification of learning materials or other appropriate actions
- Follows established learning delivery protocols
- Ministry of Health will be responsible for development and customization of training curriculum and materials , Content and the Data to support the training outlined within the Learning Plan Development Session (LPDS)

- Responsible for timely completion of learning materials to meet delivery dates
- Responsible for ongoing maintenance of materials
- Maintains a positive attitude toward change

Solution / Project Teams

The solution teams are the individual teams focusing on a specific solution such as Radiology, Surgery etc and resemble how the project will be structured with the Cerner event based methodology. Each team will have Cerner counterparts for their solution and attend key events, weekly conference calls, and other project related communication mechanisms with them. Each solution team will have a number of super users allocated to support the workflow during conversion

Responsibilities

- Acts as a primary resources for their solution
- Attend required key events and conference calls
- Complete localisation deliverables for their solution in a timely manor
- Complete test scripts and testing for their solution
- Assists with the training aspects of the solution
- Complete policies and procedures for their solution
- Attend integrated sessions with other solutions to ensure a holistic systems approach
- Complete conversion plan for their solution area
- Responsible for ongoing maintenance of system post go live
- Maintains a positive attitude toward change

SETTLEMENT AND PAYMENT AGREEMENT

This Settlement and Payment Agreement (this "**Agreement**") is made and entered into on this 29th day of December 2012 (the "**Effective Date**") by and between:

(1) **CERNER MIDDLE EAST LTD.**, an exempted limited liability company established in the Cayman Islands with a foreign registered branch in the Emirate of Abu Dhabi, United Arab Emirates (the "**UAE**"), holding commercial license number CN-1003497 issued by the Abu Dhabi Department of Economic Development ("**Cerner**"), and with its registered address at P.O. Box 36750, Abu Dhabi, UAE; and

(2) **ICAPITAL LLC**, (f/k/a iCapital Sole Establishment, a sole proprietorship) a limited liability company established in the Emirate of Abu Dhabi in the UAE, holding commercial license number CN-1033579 issued by the Abu Dhabi Department of Economic Development, and with its registered address at P.O. Box 37148, C1 Tower, 13th Floor, Abu Dhabi, UAE ("**iCapital**").

A reference herein to a "**Party**" shall mean Cerner or iCapital (as applicable and as the context may so dictate) and a reference to the "**Parties**" shall mean Cerner and iCapital collectively unless otherwise indicated.

WHEREAS:

(A) Cerner and iCapital executed that certain Cerner Business Agreement on September 27, 2008 (as amended and modified from time to time, the "**CBA**"), pursuant to which Cerner and iCapital agreed to Cerner's provision of software licenses, services, and hardware of a healthcare information system to iCapital for the ultimate use of the end-user client, the UAE Ministry of Health for the Northern Emirates (the "**UAE MoH**"), across several hospitals and clinics located throughout the UAE (the "**Wareed Project**");

(B) the Parties have determined, through direct, good faith, knowledgeable negotiation, and mutual settlement, that the principal amount owed to Cerner and past due through October 31, 2012 (the "**Overdue Amount Settlement Date**") under the CBA for past performance by Cerner of its obligations thereunder equals one hundred eighteen million, seven hundred twenty-two thousand, eighty-eight Arab Emirati Dirhams (AED 118,722,088) (the "**Overdue Amount**");

(C) the Parties desire to enter into this Agreement, setting forth the schedule and form of payments to be made to Cerner for the Overdue Amount, which amount has never been paid or contested;

(D) the Parties desire to finally and forever quantify the value of Cerner's performance – which performance is fully and irrevocably acknowledged by iCapital – under the CBA, and to finally and forever define the principal amount due to Cerner by iCapital for such Cerner performance up to and through the Overdue Amount Settlement Date as the Overdue Amount;

Cerner Initials ____ iCapital Initials AD

(E) have agreed to continue Cerner's provision of services and software licenses, *inter alia*, without any claim of breach by any Party for any alleged breaches – whether asserted or unasserted – that occurred commencing on the execution date of the CBA until the effective date of this Agreement (such period, the "**Past Breach Period**"), including any breaches discovered subsequent thereto that occurred during the Past Breach Period; and

(F) have agreed that iCapital shall pay the Overdue Amount according to a modified payment plan more fully set forth in Schedule A (*Payment Schedule*) attached hereto which has been requested by iCapital, and accepted by Cerner only in reliance upon:

a. representations and assurances by iCapital that the full aggregate amounts can and will be paid on the dates agreed and upon other representations, warranties, covenants and agreements contained herein, including without limitation the fulfillment of conditions precedent set forth herein;

b. the issuance of post-dated checks in connection with the Overdue Amount by iCapital (executed by an authorized signatory(ies) of iCapital as acceptable to Cerner); and

c. the issuance of the Guarantee and the Corporate Security Guarantee (as defined below) by Belbadi Enterprises LLC, a limited liability company established in the Emirate of Abu Dhabi in the UAE, holding commercial license number CN-1000592 issued by the Abu Dhabi Department of Economic Development, and with its registered address at P.O. Box 27330, Al Khaldiya, Area 3, Abu Dhabi, UAE Abu Dhabi, UAE ("**Belbadi**").

NOW, THEREFORE, for acknowledged good and valuable consideration and intending to be legally bound, Cerner and iCapital agree and covenant as follows:

1. **Conditions Precedent**. The following conditions precedent must be fulfilled, or caused to be fulfilled, by iCapital prior to the effectiveness of this Agreement.

a. Delivery of the Corporate Guarantee (the "**Guarantee**") issued by Belbadi, duly executed by an authorized signatory(ies) of Belbadi in connection the Overdue Amount signed before a licensed Notary Public in the UAE and in a form satisfactory to Cerner;

b. Delivery of the Corporate Security Guarantee (the "**Corporate Security Guarantee**") issued by Belbadi, duly executed by an authorized signatory(ies) of Belbadi in connection with remaining amounts owed under the CBA exclusive of the Overdue Amount signed before a licensed Notary Public in the UAE and in a form satisfactory to Cerner;

Cerner Initials [initials] iCapital Initials [initials]

c. Delivery of Amendment No. 5 to the CBA, in a form acceptable and satisfactory to Cerner, duly executed by an authorized signatory(ies) of Cerner and iCapital (the "**Amendment**");

d. Delivery of post-dated checks issued by iCapital (signed by a duly authorized signatory(ies) of iCapital, as approved by Cerner), which, when added in the aggregate, total the Overdue Amount, in a form satisfactory to Cerner as set forth in Schedule A (*Payment Schedule*) received on or before effective date of this Agreement; and

e. Delivery of a copy of a legal opinion issued by iCapital and Belbadi's UAE counsel (and addressed for the benefit of iCapital and Belbadi) opining on the enforceability of the Guarantee and the Corporate Security Guarantee and the acceptability of post-dated checks as a form of payment for past due amounts in the UAE in a form acceptable to Cerner on or before the effectiveness of this Agreement.

Failure to fulfill any of the conditions precedent set forth above in accordance herewith absent any written extension or waiver thereof shall void this Agreement prior to its effectiveness.

2. **Release of Obligations under this Settlement Agreement**. iCapital shall not be released from its obligations under this Agreement until the earlier of (i) the date upon which all post-dated checks issued in connection herewith clear and are posted into an account controlled by Cerner and (ii) earlier termination of this Agreement in connection with the CBA.

3. **Post-Dated Checks**. iCapital shall issue post-dated checks payable to the order of Cerner as set forth in Schedule A (*Payment Schedule*) to this Agreement as payment for the Overdue Amount. iCapital, and its advisors, consultants, directors, and officers duly acknowledge that the issuance of the post-dated checks is in fulfillment of payment for the Overdue Amount and constitute neither security for future performance nor are such checks contingent on any future performance by Cerner. The post-dated checks are acknowledged by iCapital, and its advisors, consultants, directors, and officers, to be irrevocable, binding, non-cancellable, negotiable instruments to be paid on demand to the financial institution backing such checks. The post-dated checks shall be presented by Cerner for payment in accordance with the schedule set forth in Schedule A (*Payment Schedule*) unless otherwise accelerated in accordance with this Agreement, the CBA, the Guarantee, and/or the Corporate Settlement Guarantee.

4. **Acceleration of Payments**. Cerner shall accept such payments and, only upon receipt of all such payments, release iCapital of any further obligation under this Agreement. In the event any payment owed pursuant to this Agreement is not honored when presented for payment in accordance with Schedule A (*Payment Schedule*) or does not otherwise post in Cerner's account as clearing in accordance herewith, the full amount of that payment and all remaining payments under this Agreement, in addition to the Effective Date Accrued Interest Amount (as such term is defined under the Amendment) shall be accelerated and shall become immediately due and payable in full. The foregoing notwithstanding, iCapital shall earn a cure period of fifteen (15) calendar days to correct any issue arising out of the presentment of a check following the due clearance of the first three (3) checks before Cerner has the right to accelerate payments or otherwise declare a payment default in connection herewith.

5. **Clearance of Checks and Consequences of Failure**. All checks must clear, absent bank error, within five (5) business days of presentment by Cerner to the financial institution of Cerner's choosing in the UAE.

a. Failure to clear within the time frame indicated above for any reason whatsoever, absent bank error, for the post-dated checks shall, subject to any cure period earned by iCapital in Section 4 (*Acceleration of Payments*) above, give Cerner the immediate right to present all of the post-dated checks for payment and enforce its rights against Belbadi under both the Guarantee and the Corporate Security Guarantee, exclusive of any other rights and remedies Cerner may have against iCapital, the owners of iCapital, and Belbadi without further notice to iCapital and/or Belbadi.

b. A default under this Section 5 (*Clearance of Checks and Consequences of Failure*), subject only to any cure period earned by iCapital in Section 4 (*Acceleration of Payments*) above, shall constitute a cross-default of the Guarantee, the CBA, and the Corporate Settlement Guarantee.

As a result, in the event of a default by iCapital for non-payment of fees under the Settlement Agreement in connection only with the presentment of the post-dated checks for payment by Cerner (subject only to any cure period earned by iCapital in Section 4 (*Acceleration of Payments*) above), all legal fees and other costs and expenses related to collection incurred by Cerner in the pursuit and collection of amounts owed hereunder shall be the responsibility of iCapital and Belbadi.

6. **Presentment of Audited Financial Statements**. iCapital agree to provide audited financial statements, as audited by an internationally recognized and UAE-licensed auditing firm, on an annual basis throughout the Term as generally released. iCapital agree to provide the same audited financials to Cerner that are required of each organization by the Abu Dhabi Department of Economic Development in connection with the renewal of each entity's commercial license.

7. **Waiver and Release of Past Claims**. By the execution of this Agreement, each Party waives, covenants not to sue upon, and releases the other Party and each of its affiliates, and each of its and their directors, officers, employees, agents and representatives, from any and all claims, causes of action, defenses, liabilities, or obligations of any kind, asserted or unasserted, arising any kind of statute, contract, tort, or claim in equity or restitution, no matter when or how such claim arose, for any and all acts or omissions during the Past Breach Period arising out of, or relating in any way to the CBA, the performance under the CBA, the licenses, products and services provided by Cerner to iCapital thereunder, or the relationship between Cerner and iCapital; provided, however, that this waiver and release provision shall not extend to the Parties' obligations hereunder.

8. **Exception to Waiver**. Each Party waives and covenants not to claim under any statute or doctrine which purports to limit the scope or applicability of this release, waiver, and covenant not to sue, due to the extent of knowledge or lack thereof on the part of the one Party or regarding any claim against the other Party or any other released person for acts or omissions that occurred during the Past Breach Period in accordance with Section 7 (*Waiver of Past Breaches*) above. The foregoing notwithstanding, this provision shall not apply to either Party in the event

Cerner Initials [initials] iCapital Initials AO of an intentional or grossly negligent misrepresentation upon which either Party materially relied upon in order to: (i) enter this Agreement, (ii) accept the issuance of the Guarantee by Belbadi, (iii) accept the issuance of the Corporate Security Guarantee by Belbadi, or (iv) accept the post-dated checks issued by, or on behalf of, iCapital.

9. **Corporate Representations and Warranties**. iCapital hereby represents and warrants to Cerner that (i) it has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder and (ii) this Agreement has been duly authorized by all necessary action on its part. iCapital represents and warrants that it is a limited liability company established in the Emirate of Abu Dhabi in the UAE holding commercial license number CN-1033579 issued by the Abu Dhabi Department of Economic Development. These representations and warranties shall be deemed to be repeating throughout the validity of this Agreement, and any attempt to change in any way the corporate form of iCapital without the prior written consent of Cerner, such consent not to be unreasonably withheld provided that the security securing this Agreement is not diluted, shall be deemed a material breach of this Agreement.

10. **Entire Agreement**. This Agreement shall supersede all prior agreements, discussions and negotiations between the Parties with respect to Overdue Amount and either Cerner or iCapital's performance under the CBA up to the Overdue Amount Settlement Date, and shall constitute and contain the entire agreement of the Parties, relating thereto. No oral or written statements, representations, documents, promises or any other prior materials not embodied herein shall be of any force or effect. This Agreement shall fully and finally settle and replace any and all claims, actual or potential by either Party under any prior oral or written agreement between the Parties or any claim enforceable by either Party other than the terms of this Agreement during the Past Breach Period.

11. **Dismissal of Arbitration and Fulfillment of Cited Defaults by iCapital.** Cerner has commenced arbitration proceedings against iCapital and Mr. Ahmed Saeed Mohammed Al-Badi Al-Dahari in the ICC under the reference 18941/VRO (*the Proceedings*). Cerner agrees to withdraw the Proceedings within 15 days of the Effective Date (and in any event no later than April 30, 2013) of this Agreement by writing to the ICC (or by writing to the Arbitral Tribunal, if an Arbitral Tribunal has been constituted) and formally requesting closure of the proceedings with no order as to costs. Cerner shall provide evidence to iCapital of a written request to withdraw court cases in front of the ICC and the Missouri state courts (with respect to the preliminary injunction) as soon as possible following effectiveness of this Agreement. Each Party agrees to bear their own costs in connection with the proceedings. All defaults set forth in the Notice of Default issued by Cerner on September 26, 2012 to iCapital shall be considered resolved upon effectiveness of this Agreement as between the Parties.

12. **Amendment**. This Agreement cannot be amended, altered or modified except by a written instrument executed by the Parties hereto.

13. **No Assignment**. iCapital may not assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of Cerner. Cerner may not assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of iCapital except in connection with a *bona fide* reorganization or merger.

14. **Governing Law**. The governing law provision of the CBA shall be applicable to this Agreement.

15. **Arbitration**. The arbitration provision set forth in Amendment 5 to the CBA shall be applicable to this Agreement.

16. **Effectiveness and Counterparts**. This Agreement shall be enforceable and effective as among the Parties when signed by all Parties. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[Remainder of page intentionally left blank; signature page(s) follow.]

Cerner iCapital

SCHEDULE A

PAYMENT SCHEDULE

	Date of PDC	Amount (in AED)	Issuing Bank
1.	December 29, 2012	9,175,000.00	Union National Bank
2.	January 31, 2013	14,825,000.00	Union National Bank
3.	April 25, 2013	34,750,490.37	Union National Bank
4.	September 5, 2013	19,216,708.47	Union National Bank
5.	December 5, 2013	9,421,565.96	Union National Bank
6.	February 20, 2014	15,666,667.20	Union National Bank
7.	May 20, 2014	15,666,666.20	Union National Bank
	TOTAL	**118,722,098.20**	

Future receivable payments (timing, schedule, payment terms, and other specific details) are set forth in the Amendment (Amendment No. 5 to the Cerner Business Agreement).

Cerner

آي كابيتال
icapital

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date first above written.

CERNER

CERNER MIDDLE EAST LTD.,
Abu Dhabi DED Commercial License Number CN-1003497

Greg G. White
____
Mr. Gregory Gene White

USA Passport Number 439944454

Emirates ID Number 784-1960-0640814-8

Managing Director of Cerner

سيرنر ميدل ايست ليمتد
Cerner
CERNER MIDDLE EAST LTD

[Company Stamp]

ICAPITAL

ICAPITAL LLC,
Abu Dhabi DED Commercial License Number CN-1033579

____
Mr. Amro Y. Al-Deeb

Egyptian Passport Number 141321

Emirates ID Number 784-1975-6941065-3

CEO of iCapital LLC

آي كابيتال ذ.م.م
icapital L.L.C.
P. O. Box : 37148
Abu Dhabi - U.A.E.

[Company Stamp]

ACKNOWLEDGED BY:

BELBADI

BELBADI ENTERPRISES LLC, as Guarantor under the Guarantee
Abu Dhabi DED Commercial License Number CN-1000592

____
Mr. Ahmed Saeed Mohammed Al-Badi Al-Dahari

UAE Passport Number A1586236

Emirates ID Number 784-1956-9104919-1

Chairman of Belbadi Enterprises LLC

[Company Stamp]

Signature Page to Settlement and Payment Agreement
Cerner, iCapital, Belbadi

Cerner icapital آي كابيتال

اتفاقية
تسوية ودفع

حررت وأبرمت اتفاقية التسوية والدفع هذه ("**الاتفاقية**")، في هذا اليوم 18 من شهر ديسمبر (كانون الأول) 2012 ("**تاريخ السريان**") بين كل من:

1- **سيرنر الشرق الأوسط لمحدودة**، وهي شركة ذات مسؤولية محدودة معفية تأسست في جزر كايمان ولديها فرع أجنبي مسجل في إمارة أبوظبي، دولة الإمارات العربية المتحدة ("إ.ع.م.")، وتحمل ترخيص تجاري رقم: CN-1003497 صادر عن دائرة التنمية الاقتصادية في أبوظبي ("**سيرنر**")، وعنوانها المسجل ص.ب.: 36750، أبوظبي، الإمارات العربية المتحدة؛ و
2- **آي كابيتال ذ.م.م**، (المعروفة سابقاً بإسم مؤسسة آي كابيتال، مؤسسة فردية) شركة ذات مسئولية محدودة تأسست في إمارة أبوظبي في دولة الإمارات العربية المتحدة، وتحمل ترخيص تجاري رقم CN-1033579 صادر عن دائرة التنمية الاقتصادية في أبوظبي، وعنوانها المسجل ص.ب.: 37148، برج C1، الطابق 13،، أبوظبي، الإمارات العربية المتحدة ("**آي كابيتال**")؛

إن الإشارة إلى "**طرف**" تعني سيرنر، أو آي كابيتال (حسب مقتضى الحال وحيثما يقتضي النص)، كما إن الإشارة إلى "**الأطراف**" تعني سيرنر وآي كابيتال مجتمعة ما لم يرد خلاف ذلك.

حيث أن:

(أ) سيرنر وآي كابيتال وقعتا اتفاقية أعمال خاصة بـ"سيرنر" بتاريخ 27 سبتمبر 2008 (بصيغتها المعدلة من وقت لآخر، ويشار إليها بلفظ "اتفاقية أعمال سيرنر")، اتفقت بموجبها سيرنر وآي كابيتال على قيام سيرنر بتوفير تراخيص البرمجيات، والخدمات، والأجهزة الخاصة بنظام معلومات الرعاية الصحية لصالح آي كابيتال للإستخدام من قبل عميل المستخدم النهائي، وتحديدا وزارة الصحة الإماراتية في الإمارات الشمالية ("**وزارة الصحة الإماراتية**")، عبر العديد من المستشفيات والعيادات المنتشرة في جميع أنحاء دولة الإمارات العربية المتحدة ("**مشروع الوريد**")؛

(ب) الأطراف قد قرروا عبر المفاوضات المباشرة التي تتسم بحسن النية والاطلاع والتسوية المتبادلة، بأن المبلغ الأصلي مستحق الدفع لـ"سيرنر" والذي فات موعد استحقاقه بتاريخ 31 أكتوبر (تشرين الأول) 2012 (**"تاريخ تسوية المبلغ مستحق الدفع"**) بموجب اتفاقية أعمال سيرنر وذلك نظير الأداء السابق من قبل سيرنر لالتزاماتها بموجب الاتفاقية المذكورة يعادل 118,722,088 درهم (**"المبلغ مستحق السداد"**)؛

(ج) الأطراف يرغبون بابرام هذه الاتفاقية التي تحدد جدول وصيغة الدفعات الواجب سدادها إلى سيرنر نظير المبلغ مستحق السداد، والذي لم يتم دفعه نهائيا أو الاعتراض عليــه ؛

(د) الأطراف يرغبون بتحديد قيمة أداء سيرنر بشكل نهائي ودائمي – علما بأن هذا الأداء قد تم الاقرار به بشكل تام وبشكل غير قابل للنقض من قبل آي كابيتال بموجب اتفاقية أعمال سيرنر ويرغبون بتحديد المبلغ الأصلي المستحق لـ"سيرنر" بشكل نهائي ودائمي من قبل آي كابيتال نظير أداء سيرنر لغاية وانتهاء بتاريخ تسوية المبلغ مستحق الدفع والمعرف بأنه المبلغ مستحق الدفع،

(هـ) تم الاتفاق على استمرار سيرنر بتقديم تراخيص الخدمات والبرمجيات، من بين جملة أمور، بدون أي ادعاء بالإخلال من قبل أي طرف نظير أية انتهاكات مزعومة سواء أكانت مؤكدة أم غير مؤكدة، تكون قد حدثت اعتبارا من تاريخ توقيع اتفاقية أعمال سيرنر لغاية تاريخ سريان هذه الاتفاقية (ويشار إلى هذه الفترة بلفظ ""**فترة الاخلال السابقة**") بما في ذلك أية حالات اخلال تم اكتشافها لاحقا لهذه الفترة والتي حدثت خلال فترة الاخلال السابقة؛ و

(و) تم الاتفاق على أن تقوم آي كابيتال بدفع المبلغ مستحق الدفع وفقا لبرنامج دفع معدل كما هو مبين بشكل أكثر تفصيلا في الجدول أ (جدول الدفع) المرفق بهذه الاتفاقية والذي تم طلبه من قبل آي كابيتال وقبوله من قبل سيرنر اعتماداً على ما يلي فقط:

أ - التعهدات والضمانات المقدمة من قبل آي كابيتال والتي مضمونها أن المبالغ الإجمالية الكاملة يمكن سدادها وسيتم دفعها في المواعيد المتفق عليها بموجب التعهدات والضمانات والعهود والاتفاقات الأخرى الواردة في هذه الاتفاقية، بما في ذلك على سبيل المثال لا الحصر الإيفاء بالشروط المسبقة المنصوص عليها في هذه الاتفاقية؛

ب - إصدار شيكات مؤجلة فيما يتعلق بالمبلغ مستحق الدفع من قبل آي كابيتال (يتم توقيعه بواسطة المخول (المخولين) بالتوقيع من آي كابيتال، كما هو مقبول لسيرنر)؛ و

ج - إصدار الضمان والضمان المصرفي المؤسسي (كما هو معرف أدناه) من قبل شركات بلبادي ذ.م.م، شركة ذات مسؤولية محدودة تأسست في إمارة أبوظبي في دولة الإمارات العربية المتحدة، وتحمل ترخيص تجاري رقم CN-1000592 صادر عن دائرة التنمية الاقتصادية في أبوظبي، وعنوانها المسجل ص.ب.: الخالدية، المنطقة 3، ص.ب.: 27330، أبوظبي، الإمارات العربية ("**بلبادي**")

والآن، عليه، نظير الاعتبارات المقر على أنها جيدة وقيمة والتي ينوى منها أن تكون ملزمة قانونا، توافق وتتعهد سيرنر، وآي كابيتال بما يلي:

1 - الشروط المسبقة: يتعين الإيفاء بالشروط المسبقة التالية، أو الإيعاز بالوفاء بها من قبل آي كابيتال قبل دخول هذه الاتفاقية حيز السريان.

أ - تسليم الضمان المؤسسي ("**الضمان**") الصادر عن بلبادي، والموقع أصولا من قبل الشخص المفوض بالتوقيع (الأشخاص المفوضين بالتوقيع) التابع/التابعين لـ"بلبادي" فيما يتعلق بالمبلغ مستحق الدفع أمام كاتب عدل مرخص في دولة الإمارات العربية المتحدة وبشكل يحوز على رضاء سيرنر؛

ب - تسليم الضمان المصرفي المؤسسي ("الضمان المصرفي المؤسسي") الصادر عن بلبادي، والموقع أصولا من قبل الشخص المفوض بالتوقيع (الأشخاص المفوضين بالتوقيع) التابع/التابعين لـ"بلبادي" فيما يتعلق بالمبالغ المتبقية المستحق بموجب اتفاقية أعمال سيرنر بمعزل عن المبلغ مستحق الدفع أمام كاتب عدل مرخص في دولة الإمارات العربية المتحدة وبشكل يحوز على رضاء سيرنر؛

ج - تسليم التعديل رقم 5 على اتفاقية أعمال سيرنر، في شكل مقبول ومرض لسيرنر، موقع أصولا من قبل الشخص المفوض بالتوقيع (الأشخاص المفوضين بالتوقيع) التابع/التابعين لـ"سيرنر"، وآي كابيتال("**التعديل**")؛

د- تسليم شيكات مؤجلة الدفع صادرة عن آي كابيتال (وموقعة أصولا من قبل المخول (المخولين) بالتوقيع من آي كابيتال، كما هو موافق عليه بواسطة سيرنر) والتي عند إضافتها إلى المجمل تصبح مساوية للمبلغ مستحق الدفع في شكل مرض لسيرنر على النحو المبين في الجدول أ (جدول الدفع) ويتم استلامها في أو قبل تاريخ سريان هذه الاتفاقية؛ و

هـ- تقديم نسخه من رأي قانوني صادر عن آي كابيتال ومحامي بلبادي (وموجه لصالح الى كل من آي كابيتال وبلبادي) في الإمارات حول نفاذ الضمان والضمان المصرفي المؤسسي ومدى قبول الشيكات مؤجلة الدفع كنموذج للدفع بالنسبة للمبالغ متأخرة السداد في الإمارات العربية المتحدة في شكل مقبول لسيرنر في أو قبل سريان هذه الاتفاقية.

إن الاخفاق في الإيفاء بأي من الشروط السابقة المنصوص عليها أعلاه وفقا لهذه الاتفاقية باستثناء أي تمديد خطي أو تنازل عنها يجعل هذه الاتفاقية باطلة قبل سريانها.

2- **الإبراء من الالتزامات بموجب اتفاقية التسوية هذه**. لا تعفى آي كابيتال من التزاماتها بموجب هذه الاتفاقية لغاية (1) تاريخ تخليص كافة الشيكات مؤجلة الدفع الصادرة في هذا الصدد وإيداعها في حساب يخضع لإدارة سيرنر و(2) الإنهاء المسبق لهذه الاتفاقية فيما يتعلق باتفاقية أعمال سيرنر، أيهما يقع أولا.

3- **الشيكات مؤجلة الدفع**. يتعين على آي كابيتال اصدار شيكات مؤجلة الدفع لأمر سيرنر على النحو المبين في الجدول أ (جدول الدفع) من هذه الاتفاقية نظير سداد المبلغ المستحق. وتقر آي كابيتال ومستشاريها واستشارييها ومديريها وموظفيها أصولا بأن إصدار الشيكات مؤجلة الدفع يعتبر وفاء للمبلغ المستحق ولا يشكل ضمانا للأداء المستقبلي أو أن هذه الشيكات مشروطة بأي أداء مستقبلي من قبل سيرنر. وتقر آي كابيتال ومستشاريها واستشارييها ومديريها وموظفيها بأن الشيكات مؤجلة الدفع تعتبر سندات متداولة غير قابلة للنقض وملزمة وغير قابلة للإلغاء، تدفع عند الطلب إلى المؤسسة المالية الداعمة لتلك الشيكات. وتقدم الشيكات مؤجلة الدفع من قبل سيرنر لغرض السداد وفقا للجدول الزمني المنصوص عليه في الجدول أ (جدول الدفع) ما لم يتم خلافا لذلك تعجيل هذا التقديم وفقا لهذه الاتفاقية، واتفاقية أعمال سيرنر، والضمان، و/أو الضمان المصرفي المؤسسي.

4 - **تسريع سداد الدفعات**. تلتزم سيرنر بقبول الدفعات ولا تبرأ ذمة آي كابيتال من أي التزام آخر بموجب هذه الاتفاقية إلا بعد استلام كافة هذه الدفعات. وفي حالة الاخفاق في الإيفاء بأية دفعة مستحقة تبعا لهذه الاتفاقية عند تقديمها للسداد وفقا للجدول أ (جدول الدفع) أو عدم ايداعها في حساب سيرنر على أنها مقبولة وفقا لهذه الاتفاقية، يتم حينئذ تسريع كامل مبلغ تلك الدفعة وكافة الدفعات المتبقية بموجب هذه الاتفاقية، بالإضافة إلى

مبلغ الفائدة المتراكمة في تاريخ السريان (على النحو المعرف فيه هذا المصطلح بموجب التعديل) ويصبح واجب الأداء فورا وبالكامل. على الرغم مما سبق، فإن آي كابيتال يكون لها إكتساب فترة خمسة عشر (15) يوماً لتصحيح أي مسألة تنشأ من تقديم شيك عقب تاريخ إستحقاق الثلاثة (3) شيكات الأولى قبل أن يكون لسيرنر الحق في تسريع الدفعات أو إعلان إخلال في الدفع فيما يتعلق بذلك.

5- تخليص الشيكات وعواقب الاخفاق. يتعين تخليص كافة الشيكات، ما عدا الخطأ البنكي، في غضون خمسة (5) أيام عمل من تقديمها عن طريق سيرنر إلى المؤسسة المالية التي تختارها سيرنر في الإمارات العربية المتحدة.

أ - إن الاخفاق في تخليص الشيكات مؤجلة الدفع ضمن الإطار الزمني المبين أعلاه لأي سبب كان، ما عدا الخطأ البنكي، يمنح سيرنر، مع مراعاة أية فترة معالجة تكتسبها آي كابيتال بموجب القسم 4 أعلاه (تسريع سداد الدفعات)، الحق الفوري في تقديم جميع الشيكات مؤجلة الدفع للسداد وفي إنفاذ حقوقها ضد بلبادي بموجب الضمان والضمان المصرفي المؤسسي، باستثناء أية حقوق وتدابير تصحيحية أخرى قد تكون لـ"سيرنر" ضد آي كابيتال، مالكي آي كابيتال، وبلبادي بدون إشعار آخر لآي كابيتالو/أو بلبادي.

ب - يشكل أي اخلال بموجب القسم 5 هذا (تخليص الشيكات وعواقب الاخفاق)، رهناً فقط لأي فترة معالجة تكتسبها آي كابيتال في القسم 4 (تسريع سداد الدفعات) أعلاه، اخلالا مشتركا بالضمان واتفاقية أعمال سيرنر، والضمان المؤسسي المصرفي.

ونتيجة لذلك، في حالة اخلال آي كابيتال نتيجة عدم دفع الرسوم بموجب اتفاقية التسوية فيما يتعلق فقط بتقديم الشيكات المؤجلة الدفع للدفع بواسطة سيرنر (رهناً فقط لأي فترة معالجة تكتسبها آي كابيتال في القسم 4 (تسريع سداد الدفعات) أعلاه، فإن جميع الرسوم القانونية والتكاليف الأخرى والنفقات المتعلقة بالتحصيل التي تتكبدها سيرنر في سبيل تحصيل المبالغ المستحقة بموجب هذه الاتفاقية تكون من مسؤولية آي كابيتال، وبلبادي.

6- تقديم القوائم المالية المراجعة. توافق آي كابيتال على تقديم قوائم مالية مراجعة، تم مراجعتها بواسطة شركة مراجعة معروفة عالمياً ومرخص لها في الإمارات العربية المتحدة، على أساس سنوي طوال المدة كلما تصدر بشكل عام. توافق آي كابيتال على تقديم نفس القوائم المالية المراجعة إلى سيرنر حيث أنها مطلوبة لكل هيئة بواسطة دائرة التنمية الإقتصادية في أبوظبي فيما يتعلق بتجديد الرخصة التجارية لكل كيان.

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7- **التنازل وإبراء الذمة نظير المطالبات السابقة**. بتوقيع هذه الاتفاقية، يتنازل كل طرف عن ويتعهد بعدم مقاضاة ، ويبرئ ذمة الطرف الآخر وكل من الشركات التابعة له، وكل من مديريه وموظفيه ووكلائه وممثليه، من أي من وكافة المطالبات أو الدعاوى أو الدفاعات أو المسؤوليات أو الالتزامات مهما كان نوعها، سواء أكانت مؤكدة أم غير مؤكدة، والتي تنشأ عن اي تشريع، أو عقد أو مسؤولية تقصيرية أو مطالبة بالإنصاف أو رد الاعتبار بغض النظر عن زمان أو طريقة نشوء هذه المطالبة، نظير أي من وكافة التصرفات أو الاغفالات خلال فترة الاخلال السابق والتي تنشأ عن أو تتعلق بأي شكل من الأشكال باتفاقية أعمال سيرنر، والأداء بموجب اتفاقية أعمال سيرنر، والتراخيص، والمنتجات والخدمات التي تقدمها سيرنر لصالح آي كابيتال بموجبها، أو العلاقة بين سيرنر وآي كابيتال؛ شريطة ألا يمتد نص التنازل وإبراء الذمة هذا إلى التزامات الأطراف بموجب هذه الاتفاقية.

8- **الاستثناء من التنازل**. يتنازل كل طرف ويتعهد بعدم رفع أي مطالبة بموجب أي قانون أو تشريع يرمي إلى الحد من نطاق انطباق ابراء الذمة والتنازل هذا، ويتعهد بعدم مقاضاة بسبب مدى معرفته أو عدم معرفته من جانب طرف واحد أو فيما يتعلق بأي دعوى ضد الطرف الآخر أو أي شخص آخر عن التصرفات أو الاغفالات التي وقعت خلال فترة الاخلال السابقة وفقا للقسم 7 (التنازل عن الاخلالات السابقة) أعلاه. على الرغم مما سبق، فإن هذا الحكم لا ينطبق على أي طرف في حالة وقوع تضليل متعمد أو إهمال جسيم اعتمد عليه أي طرف بشكل جوهري من أجل: (أ) الدخول في هذه الاتفاقية، (ب) قبول اصدار الضمان من قبل بلبادي، (ج) قبول اصدار الضمان المصرفي المؤسسي من قبل بلبادي، أو (د) قبول الشيكات مؤجلة الدفع الصادرة عن أو نيابة عن آي كابيتال.

9- **الإقرارات والضمانات المؤسسية**. تقر وتضمن بموجبه آي كابيتال إلى سيرنر (أ) أنها تتمتع بالسلطة والصلاحية المؤسسية الكاملة للدخول في هذه الاتفاقية وتنفيذ التزاماتها بموجب هذه الاتفاقية و(ب) بأن هذه الاتفاقية قد تم التصريح بها حسب الأصول بموجب كافة الاجراءات اللازمة من قبلها. وتقر آي كابيتال وتضمن بأنها شركة ذات مسئولية محدودة تأسست في إمارة أبوظبي في الإمارات العربية المتحدة وتحمل الترخيص التجاري رقم: CN-1033579 الصادر عن دائرة التنمية الاقتصادية في أبوظبي. وتعتبر هذه الاقرارات والضمانات متكررة طوال سريان هذه الاتفاقية، وأية محاولة لتغيير بأية طريقة كانت الشكل المؤسسي لآي كابيتال بدون موافقة سيرنر الخطية المسبقة، هذه

الموافقة لا يمكن حجبها بصورة غير معقولة على أن لا يضعف ذلك من التأمين الناتج عن هذه الإتفاقية، فإن ذلك يعد خرقا جوهريا لهذه الاتفاقية.

10- مجمل الاتفاق. هذه الاتفاقية تلغي وتحل محل جميع الاتفاقيات والمناقشات والمفاوضات السابقة بين الأطراف فيما يتعلق بالمبلغ المستحق وأداء سيرنر أو آي كابيتال بموجب اتفاقية أعمال سيرنر لغاية تاريخ تسوية المبلغ المستحق. وتشكل هذه الاتفاقية وتحتوي على مجمل الاتفاق بين الأطراف المتعلق بها. على أن أية بيانات شفهية أو خطية أو اقرارات أو وثائق أو وعود أو أية مواد أخرى غير متضمنة في هذه الاتفاقية لا يكون لها أي تأثير أو مفعول. كما تعتبر هذه الاتفاقية تسوية كاملة ونهائية لأي من وكافة المطالبات، الفعلية أو المحتملة، من قبل أي طرف بموجب أي اتفاق شفهي أو خطي بين الأطراف أو أية مطالبة قابلة للنفاذ من قبل أي طرف بخلاف أحكام وشروط هذه الاتفاقية خلال فترة الاخلال السابق.

11- وقف التحكيم والوفاء بالإخلالات بواسطة آي كابيتال. بدأت سيرنر إجراءات التحكيم ضد آي كابيتال والسيد/ أحمد سعيد محمد البادي الظاهري في ICC تحت الرقم المرجعي 18941/VRO (الإجراءات). توافق سيرنر على سحب الإجراءات في خلال 15 يوم من تاريخ فعالية (وفي أية حال في موعد لا يتجاوز 30 أبريل 2013، في غياب الظروف الطارئة) هذه الإتفاقية كتابةً إلى ICC (أو كتابةً إلى محكمة التحكيم، إذا تم تشكيل محكمة تحكيم) وتطلب بشكل رسمي إغلاق الإجراءات بدون حكم أو تكاليف. يوافق كل طرف على تحمل التكاليف الخاصة به فيما يتعلق بالإجراءات. جميع الإخلالات المذكورة في إخطار الإخلال الصادر بواسطة سيرنر في 26 سبتمبر 2012 إلى آي كابيتال سوف يتم إعتبارها قد تم تسويتها عند سريان هذه الإتفاقية بين الأطراف.

12- التعديل. لا يمكن تعديل هذه الاتفاقية أو تغييرها إلا بموجب سند خطي يوقع عليه من قبل أطراف هذه الاتفاقية.

13- عدم التنازل. لا يجوز لآي كابيتال التنازل عن أو خلافا لذلك تحويل حقوقها والتزاماتها بموجب هذه الاتفاقية بدون موافقة سيرنر الخطية المسبقة. ولا يحق لـ"سيرنر" التنازل عن أو خلافا لذلك تحويل حقوقها والتزاماتها بموجب هذه الاتفاقية بدون موافقة خطية مسبقة من آي كابيتال إلا فيما يتعلق بإعادة الهيكلة أو الاندماج حسن النية.

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14- القانون المطبق. يسري النص الخاص بالقانون المطبق الوارد في اتفاقية أعمال سيرنر على هذه الاتفاقية.

15- التحكيم. يسري نص التحكيم الوارد في التعديل 5 من اتفاقية أعمال سيرنر على هذه الاتفاقية.

16- السريان والنسخ. تدخل هذه الاتفاقية حيز السريان بين الأطراف عند التوقيع عليها من قبلهم. ويجوز توقيع هذه الاتفاقية من قبل الأطراف على نسخ منفصلة يعتبر كل منها عند توقيعها وتسليمها على أنه نسخة أصلية ولكن تشكل كافة هذه النسخ مجتمعة سندا واحدا والسند نفسه.

[الصفحات الباقية تركت فارغة عمدا؛ صفحة (صفحات) التوقيع تتبع.]

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جدول أ
جدول الدفع

	تاريخ الشيك	المبلغ (بالدرهم الاماراتي)	بنك الإصدار
.1	29 ديسمبر 2012	9,175,000.00	بنك الاتحاد الوطني
.2	31 يناير 2013	14,825,000.00	بنك الاتحاد الوطني
.3	25 أبريل 2013	34,750,490.37	بنك الاتحاد الوطني
.4	5 سبتمبر 2013	19,216,708.47	بنك الاتحاد الوطني
.5	5 ديسمبر 2013	9,421,565.96	بنك الاتحاد الوطني
.6	20 فبراير 2014	15,666,667.20	بنك الاتحاد الوطني
.7	20 مايو 2014	15,666,666.20	بنك الاتحاد الوطني
	الإجمالي	**118,722,098.20**	

"دفعات أخرى من الذمم المدينة (الوقت، الجدول، شروط الدفع وغيرها من التفاصيل) مبينة في التعديل (التعديل الخامس لاتفاقية أعمال سيرنر)".

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وإشهادا بما تقدم، أوعز أطراف هذه الاتفاقية بتوقيعها أصولا اعتبارا من تاريخ السريان المذكور في صدرها.

سيرنر

سيرنر الشرق الأوسط المحدودة،
رخصة تجارية صادرة عن دائرة التنمية الاقتصادية- أبوظبي رقم: CN-1003497

سيرنر ميدل ايست ليمتد Cerner CERNER MIDDLE EAST LTD

السيد/ غريغوري جين وايت
يحمل جواز السفر الأمريكي رقم: 439944454
وبطاقة الهوية الموحدة رقم: 784-1960-0640814-8
المدير المفوض – سيرنر

[ختم الشركة]

آي كابيتال
آي كابيتال ذ.م.م
رخصة تجارية صادرة عن دائرة التنمية الاقتصادية- أبوظبي رقم: CN-1033579

آي كابيتال ذ.م.م icapital LLC P. O. Box : 37148 Abu Dhabi - U.A.E.

السيد/ عمرو الديب

يحمل جواز سفر مصري رقم: 141321

وبطاقة الهوية الموحدة رقم: 784-1975-6741065-3
رئيس مجلس إدارة آي كابيتال

[ختم الشركة]

اقر بواسطة:

بلبادي

شركات بلبادي ذ.م.م، بصفتها الضامن بموجب الضمان
رخصة تجارية صادرة عن دائرة التنمية الاقتصادية- أبوظبي رقم: CN-1000592

السيد/ أحمد سعيد محمد البادي الظاهري

يحمل جواز سفر الإمارات رقم: A1586236

وبطاقة الهوية الموحدة رقم: 784-1956-9104919-1
رئيس شركات بلبادي ذ.م.م

[ختم الشركة]

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AMENDMENT NO. 5
TO THE
CERNER BUSINESS AGREEMENT

This **AMENDMENT NO. 5** (this "**Amendment**") to that certain Cerner Business Agreement dated September 27, 2008 (G) (as amended from time to time and inclusive of all schedules, attachments and exhibits thereto, the "**CBA**") is executed on the 29th day of December 2012 (G) (the "**Effective Date**") by and between:

(1) **CERNER MIDDLE EAST, LTD.**, an exempted company incorporated in the Cayman Islands and qualified to do business as a registered branch holding Abu Dhabi Department of Economic Development commercial license CN-1003497 and whose registered address is at P.O. Box 36750, Abu Dhabi, United Arab Emirates ("**Cerner**"); and

(2) **ICAPITAL LLC** (f/k/a iCapital Sole Establishment, a sole proprietorship), a limited liability company established in the Emirate of Abu Dhabi in the United Arab Emirates (the "**UAE**") holding Abu Dhabi Department of Economic Development commercial license number CN-1033579 and whose registered address is at C1 Tower, 13th Floor, P.O. Box 37148, Abu Dhabi, UAE ("**iCapital**" or the "**Client**").

Cerner and the Client shall individually be referred to herein as a "**Party**" and collectively as the "**Parties**".

Included herein are the following Exhibits, Attachments and Schedules:

Exhibits
Exhibit A (*Detailed Summary of Amounts Invoiced and Owed by Client to Cerner*)
Exhibit B (*Payment Schedule After Execution of Amendment No. 5*)

WITNESSETH:

WHEREAS, the CBA remains valid and binding upon the Parties;

WHEREAS, the Parties have previously amended and modified the CBA by executing the following documents:

a. Various Cerner System Schedule Nos. 1-9 (collectively, the "**Cerner System Schedules**"),
b. Amendment No. 1 dated November 28, 2008 ("**Amendment No. 1**"),
c. Amendment No. 2 dated June 29, 2009 ("**Amendment No. 2**"),
d. Amendment No. 3 dated April 6, 2010 ("**Amendment No. 3**"), and
e. Amendment No. 4 dated April 22, 2010 (("**Amendment No. 4**, and together with Cerner System Schedules, Amendment No. 1, Amendment No. 2, and Amendment No. 3, the "**Previous Amendments**"); and

WHEREAS, contemporaneously with the execution of this Amendment, the Parties shall execute that certain Settlement and Payment Agreement (the "**Settlement Agreement**") dated on or before the Effective Date;

WHEREAS, as part of the Settlement Agreement, the Parties have determined, through direct, good faith, knowledgeable negotiation, and mutual settlement, that the amounts owed and past due through October 31, 2012 (the "**Overdue Amount Settlement Date**") under the CBA for past performance by Cerner of its obligations thereunder equals one hundred eighteen million, seven hundred twenty-two thousand, eight-eight Arab Emirati Dirhams (AED 118,722,088) (the "**Overdue Amount**");

WHEREAS, Belbadi Group Enterprises, a limited liability company established in the Emirate of Abu Dhabi in the United Arab Emirates (the "**UAE**"), holding commercial license number CN-1000592 issued by the Abu Dhabi Department of Economic Development, and with its registered address at P.O. Box 27330, Al Khaldiya, Area 3, Abu Dhabi, UAE ("**Belbadi**"), shares the same chairman in Mr. Ahmed Saeed Mohammed Al-Badi Al-Dahari and is an affiliate of iCapital LLC;

WHEREAS, Belbadi has agreed to issue two (2) corporate guarantees in favor of Cerner to secure (a) post-dated checks that are being issued by iCapital, which, in the aggregate, shall total the Overdue Amount as of the Overdue Amount Settlement Date in accordance with the CBA (such corporate guarantee, the "**Guarantee**") in connection with payments for services already rendered by Cerner to the Client and (b) future receivables due (such receivables, the "**Future Payments**") from the Client to Cerner under the revised payment schedule set forth in this Amendment (such corporate guarantee, the "**Corporate Security Guarantee**" and together with the Guarantee, the "**Belbadi Guarantees**");

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WHEREAS, the Parties, in consideration of the fulfillment of certain conditions precedent set forth herein by the Client, wish to re-schedule the Future Payments owed to Cerner by the Client for certain Professional Services, Support, Subscriptions, AMS, and OMS; and

WHEREAS, the Parties, in consideration of the fulfilment of certain conditions precedent set forth herein by the Client, wish to further amend the CBA and certain Cerner System Schedules (as specified herein) in accordance with the terms and conditions of the CBA by duly executing this Amendment,

NOW, THEREFORE, in consideration of the premises and for other good and mutually valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to the following conditions and amendments to the CBA:

Section 1. **Definitions and Principles of Construction**

1.1. Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the CBA.

1.2. The principles of construction set out in the CBA shall have effect as if set out in this Amendment.

Section 2. **Conditions Precedent to Effectiveness of this Amendment**

2.1. Notwithstanding any other provision of this Amendment, the Parties shall not incur any liability to the Client under or in connection with this Amendment, until receipt by Cerner from the Client of the following:

(a) receipt by Cerner of seven (7) post-dated checks issued by iCapital and duly executed by a duly authorized signatory(ies) (or such other signatory as is acceptable to Cerner), which, when added in the aggregate, total the Overdue Amount, in a form satisfactory to Cerner received on or before the Effective Date;

(b) clearance of the first and second post-dated checks issued by iCapital into Cerner's bank account;

(c) receipt by Cerner of the Settlement and Payment Agreement duly executed by an authorized signatory(ies) of iCapital and Cerner, signed before a licensed Notary Public in the UAE and in a form satisfactory to Cerner;

(d) receipt by Cerner of the Belbadi Guarantees, duly executed by an authorized signatory(ies) of Belbadi signed before a licensed Notary Public in the UAE and in a form satisfactory to Cerner; and

(e) agreement by Cerner that it shall enter into an end user license agreement with the UAE MoH in connection with the Cerner Licensed Software as soon as commercially practicable following the Effective Date (in accordance with amended Section 9.2 set forth below of the CBA).

2.2. The Client acknowledges and agrees that Cerner may assign the benefits and/or obligations of the CBA, the Belbadi Guarantees, and/or the Settlement Agreement, either partially or wholly, to any Cerner affiliate or financial institution without prior written notice to the Client. Cerner, however, agrees to provide the Client notice of such assignment as soon as commercially practicable after execution.

Section 3. **Amendments to the CBA and Cerner System Schedules**

3.1. In accordance with Section 9.11 (*Amendment*) of the CBA, the CBA and the Cerner System Schedules are hereby amended as follows:

Amendments of the CBA

Section 7.5

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Section 7.5 shall be deleted in its entirety and replaced with the following:

"**Corporate Guarantees**. Client shall provide Cerner with two (2) corporate guarantees in favor of Cerner to secure (a) post-dated checks that are being issued by Client, which, in the aggregate, shall total the Overdue Amount as of the Overdue Amount Settlement Date in accordance with the CBA (such corporate guarantee, the "**Guarantee**") in connection with payments for services already rendered by Cerner to the Client and (b) future receivables due (such receivables, the "**Future Payments**") from the Client to Cerner under the revised payment schedule set forth in this Amendment (such corporate guarantee, the "**Corporate Security Guarantee**" and together with the Guarantee, the "**Belbadi Guarantees**")."

Section 7.6

Section 7.6 of the CBA shall be amended to include the following paragraph:

"Client shall immediately return the bank guarantee to Cerner upon the earlier of (a) termination of this Agreement by either Party in accordance herewith (except in the case of termination by Client of Cerner for cause), (b) release by the UAE MoH of the Client's bank guarantee in favor of the UAE MoH, or (c) November 26, 2013. In the event that the UAE MoH requires a renewal of its performance bond with Client to a term beyond November 26, 2013 in connection solely with the original Agreement (exclusive of AMS, OMS, Support, Subscriptions, or any other Services that are not directly provided by Cerner in connection with implementation), then Cerner shall, working with Client, determine in good faith the value of Professional Services remaining on the Agreement, which shall be determined primarily by the amounts remaining to be paid by Client to Cerner for Professional Services at such time. Such remaining value of Professional Services shall be used to reduce the value of the performance bond to a function of ten percent (10%) of such lowered, adjusted figure."

Section 9.1

Section 9.1 (*Term of Agreement*) of the CBA shall be deleted in its entirety and replaced with the following:

"This Agreement shall commence on the Effective Date and remain effective until (i) the earlier of termination by either Party in accordance with (w) this Agreement or (x) the Settlement and Payment Agreement (under a cross-default provision); or (ii) upon issuance by Client of a final acceptance Event Activity Report (in the same form as Event Activity Reports previously used between the parties) of Cerner's Professional Services in connection with the implementation of the original Scope of Work (14 hospitals (as amended from 7) and 60 clinics) signifying Cerner's completion thereof (based on objective criteria used previously to signify completion of certain events) tied to the Wareed Project (the "**Term**").

As of the date of Amendment No. 5, the parties agree and acknowledge that Professional Services for each of the 14 hospitals are complete (apart from Bundle 2 and 3 at two hospitals that do not have enough electrical load and Bundle 4 (third party software) across all 14 hospitals and clinics). Professional Services for one clinic out of the 60 clinics under the original Scope of Work is complete.

The foregoing notwithstanding, the surviving terms and conditions of this Agreement applicable to AMS (terminating August 31, 2014), OMS (July 31, 2014), Subscriptions (terminating June 30, 2014), and Support (terminating September 27, 2014) shall survive past September 27, 2013 except in the case of earlier termination, in whole or in part, of AMS, OMS, Subscriptions, and Support (and any Professional Services related to AMS, OMS, Subscriptions, and Support) by either Party. Termination of this Agreement, in part or in whole, may result in termination of AMS, OMS, Subscriptions, and/or Support as determined by Cerner in accordance herewith. Any termination of this Agreement, apart from a termination by cause of Cerner by Client in accordance herewith, shall obligate the Client to return the bank guarantee referred to in Section 7.6 (*Performance Guarantee*) immediately on demand by Cerner."

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Section 9.2

Part (B) (*Termination by Cerner*) of Section 9.2 (*Termination Rights*) under Article IX (*General Provisions*) is amended by adding the following underlined language:

"Cerner shall have the right (without further obligation or liability to Client) to terminate this Agreement, or any individual portion thereof, including without limitation OMS, AMS, Support Services, Subscriptions, and Professional Services, any Cerner System Schedule, and any related license if (1) Client breaches Paragraphs 1.2, 1.3 or 9.8, (2) Client becomes more than thirty (30) days delinquent in paying any sums which are due Cerner and which are not the subject of a good faith dispute, (3) Client causes a delay in the project timeline or milestones set forth in the applicable Project Agreement that exceeds one hundred eighty (180) days (except for delays that are out of the reasonable control of Client) or (4) Client is in default in its payments to the third party financing company that has a contractual relationship with Cerner. No such termination shall occur, however, until Client first receives prior written notice and a 30-day cure period with respect to such delinquency or violation. Upon termination, Client shall immediately return or destroy all copies of the Licensed Software and certify to Cerner in writing concerning such return or destruction. The UAE MoH's right to use the Cerner Licensed Software shall survive any termination of the CBA (in whole or in part) provided the UAE MoH has signed an independent end user license agreement (the "EULA") prior to the effectiveness of termination with Cerner. Accordingly, the UAE MoH shall have the continued right (exclusive to UAE MoH under the scope limitations) to Cerner licenses for Cerner Licensed Software under the EULA. Cerner shall use commercially reasonable efforts to execute the EULA with the UAE MoH as soon as possible, with or without Client's assistance, and in any event by no later than March 31, 2013. In the event of an earlier termination event, Cerner shall use best efforts to execute the EULA with the UAE MoH prior to the effectiveness of such termination and, in any event, as soon as practicable thereafter. The responsibility for aligning the scope limitations between Cerner and UAE MoH under the EULA and the agreement between Client and the UAE MoH lies solely with Client.

The foregoing notwithstanding, Cerner shall have the immediate right to terminate the CBA, or any portion thereof, in the event that:

(a) Client defaults on any of its obligations, undertakings, representations, warranties, and/or covenants under the Settlement Agreement; and

(b) the UAE MoH contract with the Client lapses or is otherwise terminated (partially or in its entirety; for the avoidance of doubt, any partial termination by UAE MoH shall trigger a Cerner immediate termination right for only that portion of the contract terminated by UAE MoH); and

and any applicable cure periods (if any) tied to the circumstances set forth in Clauses (a) – (b) above lapse, Cerner's right to terminate this Agreement shall vest immediately without prejudice to Cerner's other rights and remedies under applicable law, and all amounts owed to Cerner, whether invoiced or not, including all third party costs and Cerner costs paid on behalf of Client in advance, and in connection with services already rendered by Cerner through the date of effectiveness of termination, as determined in Cerner's sole, reasonable discretion, shall become immediately due. Cerner's lawful termination of this Agreement in accordance herewith shall not terminate Client's obligation to pay any fees, costs, and/or expenses owed to Cerner by Client as of the effective date of such termination."

Section 9.3

Section 9.3 (*Arbitration and Injunctive Relief*) of the CBA is deleted in its entirety and replaced with the following:

"Each party to this Agreement hereby submits to binding arbitral proceedings in the event of a dispute to be heard under the exclusive jurisdiction of the International Chamber of Commerce (the "ICC") using the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect. The proceedings shall be heard by a panel of three (3) arbitrators, with each Party selecting an arbitrator and the two selected

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arbitrators selecting a third, independent arbitrator deemed appropriate to hear the dispute by the ICC. In the event the party-appointed arbitrators cannot agree on a third arbitrator, that arbitrator will be appointed by the ICC. The arbitration shall be conducted in the English language in Paris, France. The Parties may alter the venue for arbitration upon mutual written agreement no later than twenty (20) calendar days after receipt of notice by the non-initiating Party. The Parties agree not to interfere, obstruct, or otherwise impact the enforcement of a lawful, issued, binding, and non-appealable award issued by the arbitral panel in any jurisdiction worldwide. Each party to this Agreement irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. The arbitrators shall award the cost of arbitration and any attorneys' fees as just and appropriate except in cases where either Party is explicitly responsible for legal fees in this Agreement or the Settlement Agreement."

Section 9.16

Section 9.16 (*Assignment*) of the CBA shall be deleted in its entirety and replaced with the following:

"iCapital may not assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of Cerner. Cerner may not assign or otherwise transfer its rights and obligations under this Agreement without the prior written consent of the other Parties except in connection with a *bona fide* reorganization or merger."

Section 9.25

Paragraph (R) of Section 9.25 (*Co-Operational Obligations*) of the CBA is deleted in its entirety and replaced with the following:

"Cerner shall have the right to contract with the UAE MoH after the Term (as such term exists for Professional Services, AMS, OMS, Support, Subscriptions, etc. in the Agreement as of the Effective Date of Amendment No. 5) of this Agreement for any extension of the offerings provided to the UAE MoH under this Agreement through the Client without consultation, involvement (contractually or otherwise) and/or interference of the Client.

The foregoing notwithstanding, in the event of a variation issued by the UAE MoH on or prior to the expiration of the Term (as it relates to the specific offering covered by the variation) that is required to go through iCapital, as determined by Cerner and the UAE MoH, then the Parties shall work together to negotiate terms and conditions in connection with the variation (including payment) for twenty (20) days following actual knowledge of the variation provided that iCapital has been timely on all payments at the time of the issuance of the variation. In the event the Parties are unable to do so twenty (20) days after issuance of such variation, then Cerner shall have the right to negotiate directly with the UAE MoH, without Client, to attempt to resolve a solution to the variance issue in the UAE MoH's best interest, which may or may not involve Client.

In the event that the Client is timely on its payment obligations under this Agreement (as amended by Amendment No. 5) and the Settlement Agreement from the Effective Date to the date that falls exactly six (6) months prior to the natural expiration of the applicable Term for AMS, OMS, Subscriptions, and Support (and any Professional Services in connection therewith), the Client shall earn a 90-day right to negotiate extensions with Cerner for those applicable offerings to the UAE MoH in the event such extension is issued by the UAE MoH as a variation. Under such circumstances, in the event that the Parties cannot agree to suitable terms and conditions for an extension three (3) months prior to the natural expiration of the applicable Term for AMS, OMS, Subscriptions, and Support, then Cerner may directly engage and contract with the UAE MoH for such extensions without the Client."

Amendment to Page 9 of Cerner System Schedule No. 1

The table under the section entitled "Summary of Purchase Price" on page 9 is deleted and replaced in its entirety by adding the table set forth in Exhibit B (*Payment Schedule After Execution of Amendment No. 5*).

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3.2. In consideration of the Parties' execution of this Amendment No. 5 and the fulfillment of the Client's conditions precedent to this Amendment No. 5, the payment schedule, as between the Parties, for:

(a) payments previously invoiced; and

(b) payments to be invoiced to Cerner by the Client,

shall be as set forth in Exhibit B (*Payment Schedule After Execution of Amendment No. 5*) immediately following the due execution of this Amendment No. 5 and its effectiveness thereafter. The payment schedule shall be in effect so long as the Client abides by its obligations under the CBA and the Amendments.

3.3. The Client acknowledges that interest in accordance with Section 7.1(F) (*General*) of the CBA has accrued for late payments owed to Cerner by the Client in the amount of AED 28,684,772 as of October 31, 2012 (such amount, the "**Accrued Interest Amount**"). Cerner agrees to waive its right to the Accrued Interest Amount the Effective Date (with no chance of revival) in its entirety upon the fulfillment of all conditions precedent required to effectuate this Amendment and the clearance of post-dated check nos. 1, 2, and 3.

3.4. Anything to the contrary notwithstanding contained in the CBA or any of the Amendments, the Client acknowledges and agrees that (a) in the event of a material breach of its obligations under the CBA, the Settlement Agreement or any of the Amendments and (b) any applicable cure period has lapsed in connection with such material breach(es), then all undisputed monies owed and due up to and through the date of default (whether invoiced or not, including all third party costs and Cerner costs paid on behalf of Client in advance, and in connection with services already rendered by Cerner through the date of effectiveness of termination, as determined in Cerner's sole, reasonable discretion), shall be immediately owed and payable to Cerner without prejudice to Cerner's rights and remedies under the law and any applicable interest on such monies shall continue to accrue until payment is satisfied in full.

Section 4. Miscellaneous

4.1. All of the terms and conditions of the CBA (including the Previous Amendments) that are not amended, deleted, replaced or otherwise altered by the provisions of this Amendment shall remain in full force and effect and are hereby incorporated *mutatis mutandis*. In the event a direct conflict arises between the CBA and this Amendment, this Amendment shall prevail.

4.2. This Amendment, the CBA, the Previous Amendments and the agreements referred to herein and therein embody the entire understanding among the Parties and supersede all prior negotiations, understandings and agreements among them with respect to the subject matter hereof and thereof. The provisions of this Amendment may be waived, supplemented or amended only by an instrument in writing signed by the Parties hereto in accordance with the terms and subject to the conditions of the CBA.

4.3. This Amendment has been drafted in the English language, which shall govern the interpretation thereof. In the event this Amendment is required to be translated into Arabic or any other language, such translation shall be made by a duly licensed translator. Cerner shall arrange for translation of this Amendment or any other related document, including the CBA (including all schedules, exhibits, annexes and related documents attached thereto and all amendments and modifications thereto) and such translation shall be accepted by the Parties (absent manifest error). The cost of such translation shall be split by the Parties. As between the Parties hereto, the English language is the language of this Amendment and the CBA, and it is agreed that such language evidences the intention of the Parties hereto.

4.4. The foregoing notwithstanding, the limitation of liability under the CBA shall be based solely on Future Payments and may not include either (a) payments already made, received, and credited by Cerner from Client or (b) any of the Overdue Amount, regardless of when the post-dated checks related to the Overdue Amount are cashed.

4.5. Unless otherwise expressly indicated, all dates used herein shall refer to the Gregorian calendar.

AMENDMENT NO. 5
TO THE
CERNER BUSINESS AGREEMENT

4.6. If, at any time, any provision of this Amendment is or becomes illegal, invalid or unenforceable in any respect under the law and regulation of a relevant jurisdiction, the legality, validity and enforceability of such provision under the law and regulation of any other jurisdiction, and of the remaining provisions of this Agreement, shall not be affected or impaired thereby.

4.7. This Amendment shall be effective upon execution and fulfillment of all conditions precedent by the Client as set forth in this Amendment. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, which, when taken together, shall constitute one and the same agreement.

4.8. In all other respects, the Cerner System Schedule(s) and the CBA remain unchanged.

4.9. This Amendment may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Amendment.

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AMENDMENT NO. 5
TO THE
CERNER BUSINESS AGREEMENT

IN WITNESS WHEREOF, each of the Parties has caused this Amendment No. 5 to be executed and delivered on its behalf by its authorized representative as of the Effective Date first written above.

CERNER

For and on behalf of
CERNER MIDDLE EAST, LTD., ABU DHABI BRANCH

[signature]
Mr. Gregory Gene White

USA Passport Number 439944454

Emirates ID Number 784-1960-0640814-8

Managing Director

Abu Dhabi DED Commercial License No. 1003497

[Company Stamp]

ICAPITAL

For and on behalf of
ICAPITAL LLC

[signature]
Mr. Amro Y. Al-Deeb

Egyptian Passport Number 141321

Emirates ID Number 784-1975-6941065-3

CEO

Abu Dhabi DED Commercial License No. CN-1033579

[Company Stamp]

AMENDMENT NO. 5
TO THE
CERNER BUSINESS AGREEMENT

Exhibit A

Detailed Summary of Amounts Invoiced and Owed by Client to Cerner

	Payment	Amount (In AED)	Date(s) of Payments	Invoice Date	Notes
Category 1 relates to undisputed payments settled by iCapital for past work performed by Cerner and accepted by iCapital prior to execution of Amendment No. 5					
1.	Previous Payments Prior to Amendment No. 5	113,019,829.05	See Exhibit A.1	See Exhibit A.1	Payment is undisputed and settled between the Parties.
Category 2 relates to undisputed payments settled by iCapital for past work performed by Cerner and accepted by iCapital in connection with the execution of Amendment No. 5, the Settlement Agreement, the Belbadi Guarantees, the presentment of the PDCs, and fulfillment of any conditions precedent by both Parties.					
2.	PDC No. 1	See Settlement Agreement for specific details.			Payment is undisputed and settled between the Parties.
3.	PDC No. 2	See Settlement Agreement for specific details.			Payment is undisputed and settled between the Parties.
4.	PDC No. 3	See Settlement Agreement for specific details.			Payment is undisputed and settled between the Parties.
5.	PDC No. 4	See Settlement Agreement for specific details.			Payment is undisputed and settled between the Parties.
6.	PDC No. 5	See Settlement Agreement for specific details.			Payment is undisputed and settled between the Parties.
7.	PDC No. 6	See Settlement Agreement for specific details.			Payment is undisputed and settled between the Parties.
8.	PDC No. 7	See Settlement Agreement for specific details.			Payment is undisputed and settled between the Parties.
Category 3 relates to future payments to be settled by iCapital for future work performed by Cerner and accepted by iCapital in accordance with the CBA (as amended).					
9.	Future payment #1	29,493,048	09/15/2013	08/15/2013	See payment terms below
10.	Future payment #2	10,688,352	12/15/2013	11/15/2013	See payment terms below
11.	Deferred payment #1	5,951,662	04/15/2013	03/15/2013	See payment terms below
12.	Deferred payment #2	10,984,822	10/15/2013	09/15/2013	See payment terms below
13.	Future payment #3	10,688,352	01/15/2014	12/15/2013	See payment terms below
14.	Deferred payment #3	16,280,897	01/15/2014	12/15/2013	See payment terms below
15.	Future payment #4	10,688,352	04/15/2014	03/15/2014	See payment terms below
16.	Future payment #5	7,455,909	07/15/2014	06/15/2014	See payment terms below
17.	Deferred payment #4	10,082,292	07/15/2014	06/15/2014	See payment terms below
18.	TOTAL	**112,313,686**	N/A	N/A	See payment terms below.

Grand Total of Amounts Invoiced, Paid, and Owned by Client to Cerner

Category 1	AED 113,019,829.05
Category 2	AED 118,722,088.20
Category 3	AED 112,313,686.00
GRAND TOTAL	AED 344,055,603.25

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AMENDMENT NO. 5
TO THE
CERNER BUSINESS AGREEMENT

Exhibit A.1

Details of Past Invoices Already Paid by iCap

Collection Date	Date	Item Reference ID	Item Category	Cerner Reference Number	Check Number	Collection Amt - Base Curr	Collection Currency Code
1/30/2009	10/23/2008	NLS-028051	Professional Services	CON0042752	WIRE 1/30	470,000.00	AED
1/30/2009	9/27/2008	NLS-027394	Professional Services	CON0042752	WIRE 1/30	470,000.00	AED
1/30/2009	9/27/2008	NLS-027392	Licensed Software	CON0042752	WIRE 1/30	19,240,877.00	AED
4/21/2009	9/27/2008	NLS-027396	Technology / Equipment	CON0042752	AE ICAP WIRE	40,739,066.00	AED
10/18/2009	1/12/2009	PS-065263	Professional Services	CON0042752	602	2,256,517.00	AED
10/18/2009	12/8/2008	NLS-029226	Licensed Software	CON0042752	602	13,743,483.00	AED
1/20/2010	2/16/2009	NLS-030955	Licensed Software	CON0042752	WT001636	18,000.00	AED
1/21/2010	2/16/2009	NLS-030955	Licensed Software	CON0042752	WT001645	7,049,191.20	AED
1/21/2010	1/12/2009	PS-065263	Professional Services	CON0042752	WT001645	6,715,272.80	AED
2/5/2010	5/30/2009	100097562	Professional Services	CON0042752	WT001831	8,528,386.73	AED
2/5/2010	5/20/2009	100092315	Licensed Software	CON0042752	WT001831	535,382.00	AED
2/5/2010	5/20/2009	100092314	Licensed Software	CON0042752	WT001831	6,574,368.07	AED
2/5/2010	2/16/2009	NLS-030955	Licensed Software	CON0042752	WT001831	6,676,291.80	AED
5/13/2011	5/13/2011	REF CVU#3104820	Licensed Software		CC010507	55.09	AED
9/27/2011	9/27/2011	REF CVU#3106113	Licensed Software		CC011525	1,469.18	AED
9/27/2011	9/27/2011	REF CVU#3106112	Licensed Software		CC011524	1,469.16	AED
			TOTAL PAID BY ICAP FOR PAST INVOICES			113,019,829.05	

Licensed Software	53,640,586.53
Professional Services	18,440,176.53
Technology / Equipment	40,739,066.00
	113,019,819.05

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AMENDMENT NO. 5
TO THE
CERNER BUSINESS AGREEMENT

Payment Terms for Future and Deferred Payments

PROFESSIONAL SERVICES

Future payments for Professional Services amount to a total of AED 22,232,559.

Cerner shall invoice iCap for AED 5,951,662 upon the acceptance of hospitals 1 to 12.

Cerner shall invoice iCap for AED 16,280,897 upon the earlier of final acceptance of the project or the date that is the last day of the Term.

Description	Event/Milestone	Expected invoice date	Amount (AED)
Deferred payment #1	Acceptance of hospitals 1 to 12	September 15, 2013	5,951,662
Deferred payment #3	Earlier of final acceptance of the project or last day of the Term	January 15, 2014	17,198,397
Total of Future & Deferred Fees			**23,150,059**

Reconciliation of Professional Services (AED):

Invoices paid before Amendment #5:	18,440,177
Invoices paid by checks for past periods:	47,000,000
Invoices paid as part of deferred payments:	23,150,059
Invoices paid as part of future payments:	0
Total of Invoices:	**88,590,236**
Contract Value:	88,590,236

AMS FEES

For the period Nov 2012 to Dec 2013, Cerner shall invoice iCap for AMS fees in arrears. For the period Jan 2014 to the end of the Term for AMS, Cerner shall invoice iCap for AMS fees on a quarterly basis in advance. The payment schedule table in CSS #7 is replaced by the table below for the period November 2012 – August 2014. The rest of the terms and conditions of CSS #7 still apply, especially with regard to the provisions for annual fee increase and renewal terms after the end of the Term.

Invoice	Invoice date	Amount (AED)
Future payment #1 (in arrears)	August 15, 2013	16,257,121[(1)]
Future payment #2 (in arrears)	November 15, 2013	4,493,253[(2)]
Future payment #3 (in advance)	December 15, 2013	4,493,253
Future payment #4 (in advance)	March 15, 2014	4,493,253
Future payment #5 (in advance)	June 15, 2014	2,995,502[(3)]
Total of Future & Deferred Fees		**32,732,382**

(1) The amount of the 1st invoice for AMS fees include fees for the period Nov 2012 – Sep 2013 (in arrears). The total invoice of AED 16,257,121 is calculated as AED 644,477 x 10 months + AED 666,291 + AED 118,780 x 7 additional hospitals x 11 months = AED 16,257,121

(2) The amount of the 2nd invoice for AMS fees include fees for the period Oct 2013 – Dec 2013 (in arrears). AED 666,291 x 3 months + AED 118,780 x 7 additional hospitals x 3 months = AED 4,493,253

(3) AED 666,291 x 2 months + AED 118,780 x 7 additional hospitals x 2 months = AED 2,995,502

Reconciliation of AMS Fees (AED):

Invoices paid before Amendment #5:	0
Invoices paid by checks for past periods:	15,083,674
Invoices paid as part of deferred payments:	0
Invoices paid as part of future payments:	32,732,382

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Total of Invoices:	**47,816,056**
Contract Value:	47,816,056

OMS FEES

For the period Nov 2012 to Dec 2013, Cerner shall invoice iCap for OMS fees in arrears. For the period Jan 2014 to the end of the Term for AMS, Cerner shall invoice iCap for OMS fees on a quarterly basis in advance. The payment schedule table in CSS #8 is replaced by the table below for the period November 2012 – August 2014. The rest of the terms and conditions of CSS #8 still apply, especially with regard to the provisions for annual fee increase and renewal terms after the end of the Term.

Invoice	Invoice date	Amount (AED)
Future payment #1	August 15, 2013	5,371,015(1)
Future payment #2	November 15, 2013	1,529,550(2)
Future payment #3	December 15, 2013	1,529,550
Future payment #4	March 15, 2014	1,529,550
Future payment #5	June 15, 2014	509,850(3)
Total of Future & Deferred Fees		**10,469,515**

(1) The amount of the 1st invoice for OMS fees include fees for the period Nov 2012 – Sep 2013 (in arrears). The total invoice of AED 5,371,015 is calculated as AED 483,479 x 9 months + AED 509,850 x 2 months = AED 5,371,015.
(2) The amount of the 2nd invoice for OMS fees include fees for the period Oct 2013 – Dec 2013 (in arrears). AED 509,850 x 3 months = AED 1,529,550
(3) AED 509,850 x 1 month = AED 509,850

Reconciliation of OMS Fees (AED):

Invoices paid before Amendment #5:	0
Invoices paid by checks for past periods:	10,680,653
Invoices paid as part of deferred payments:	0
Invoices paid as part of future payments:	10,469,515
Total of Invoices:	**21,150,168**
Contract Value:	21,150,168

Subscriptions

For the period Nov 2012 to Dec 2013, Cerner shall invoice iCap for Subscriptions fees in arrears. For the period Jan 2014 to the end of the Term for AMS, Cerner shall invoice iCap for Subscriptions fees on a quarterly basis in advance. The payment schedule table in CSS #1 is replaced by the table below for the period November 2012 – August 2014. The rest of the terms and conditions of CSS #1 still apply, especially with regard to the provisions for annual fee increase and renewal terms after the end of the Term.

Invoice	Invoice date	Amount (AED)
Future payment #1	August 15, 2013	7,864,912(1)
Future payment #2	November 15, 2013	2,144,976(2)
Future payment #3	December 15, 2013	2,144,976
Future payment #4	March 15, 2014	2,144,976
Future payment #5	June 15, 2014	1,429,984(3)
Total of Future & Deferred Fees		**15,729,824**

(1) The amount of the 1st invoice for Subscriptions fees include fees for the period Nov 2012 – Sep 2013 (in arrears). The total invoice of AED 7,864,912 is calculated as AED 714,992 x 11 months = AED 7,864,912
(2) The amount of the 2nd invoice for Subscriptions fees include fees for the period Oct 2013 – Dec 2013 (in arrears).AED 714,992 x 3 months = AED 2,144,976
(3) AED 714,992 x 2 months = AED 1,429,984

Reconciliation of Subscriptions Fees (AED):

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AMENDMENT NO. 5
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Invoices paid before Amendment #5:	0
Invoices paid by checks for past periods:	7,657,334
Invoices paid as part of deferred payments:	0
Invoices paid as part of future payments:	15,729,824
Total of Invoices:	**23,387,158**
Contract Value:	23,387,158

Licensed Software Support

Except for the amounts that have been deferred as part of the settlement agreement, Cerner shall invoice iCap for annual Support on a quarterly basis in advance, except for the 1st quarter of the 5th year of Support (Oct 2013 – Dec 2013) that shall be invoiced in arrear in December 2013. The payment schedule table in CSS #1 is replaced by the table below for the period November 2012 – August 2014. The rest of the terms and conditions of CSS #1 still apply, especially with regard to the provisions for annual fee increase and renewal terms after the end of the Term. The table below also includes payment of annual support for years 3 and 4, which Cerner has agreed to defer payment for, as part of the settlement agreement.

Invoice	Invoice date	Amount (AED)
Deferred payment #2	September 15,2013	10,067,322[1]
Future payment #2	November 15, 2013	2,520,573[2]
Future payment #3	December 15, 2013	2,520,573
Future payment #4	March 15, 2014	2,520,573
Deferred payment #4	June 15, 2014	10,082,292[3]
Future payment #5	June 15, 2014	2,520,573
Total of Future & Deferred Fees		**30,231,906**

(1) This amount is for annual Support fees for year 3 of the contract (originally due in Sep 2011, but deferred for payment to Sep 2013).
(2) This amount is for a quarter of the annual Support fees for year 5 of the contract. The 1st quarter is invoiced in arrears, the other 3 quarters will be invoiced in advance.
(3) This amount is the annual Support fees for year 4 of the contract (originally due in Sep 2012, but deferred for payment to Jun 2014).

Reconciliation of Annual Licensed Software Support Fees (AED):

Invoices paid before Amendment #5:	0
Invoices paid by checks for past periods:	17,556,571
Invoices paid as part of deferred payments:	20,149,614
Invoices paid as part of future payments:	10,082,292
Total of Invoices:	**47,788,477**
Contract Value:	47,788,477

CONFIDENTIAL

Cerner Initials [initials] iCapital Initials [initials]

Cerner — iCapital

AMENDMENT NO. 5
TO THE
CERNER BUSINESS AGREEMENT

Exhibit B

Payment Schedule After Execution of Amendment No. 5

Contract Amounts

Category	Original Amount (in AED)	Revised Amount (in AED)	Change (in AED)
Licensed Software ("LSW")	58,244,390	58,244,390	0
LSW Support	47,788,477	47,788,477	0
Professional Services	88,590,236	88,590,236	0
AMS	38,217,721	47,816,056	+9,598,335
OMS	21,150,168	21,150,168	0
Equipment & Maintenance	56,748,548	56,748,548	0
Managed Services	330,570	330,570	0
Subscriptions	37,267,904	23,387,158	-13,880,746
TOTAL	**348,338,014**	**344,055,603**	**-4,282,411**

Full Contract and Invoices/Payments Reconciliation

Amounts in AED	Paid as of 10/31/2012	Payable with Post Dated Checks 2012-14	Deferred payments	Future Receivables to Be Paid	TOTAL Invoice = Contract
Cerner Licensed Software	53,840,587	4,403,803			58,244,390
Hosting Services		330,570			330,570
Professional Services	18,440,177	47,000,000	23,150,059		88,590,236
Technology/Equipment	40,739,066	16,009,482			56,748,548
OMS		10,680,653		10,469,515	21,150,168
AMS		15,083,674		32,732,382	47,816,056
Subscriptions		7,657,334		15,729,824	23,387,158
5-year Support		17,556,571	20,149,614	10,082,292	47,788,477
TOTAL	**113,019,830**	**118,722,087**	**43,299,673**	**69,014,013**	**344,055,603**

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AWARD

INTERNATIONAL CHAMBER OF COMMERCE (ICC)
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ICC INTERNATIONAL COURT OF ARBITRATION

CASE No. 19683/AGF/ZF

CERNER MIDDLE EAST, LTD. (Cayman Islands)

vs/

1. ICAPITAL, LLC

(United Arab Emirates)

2. Mr Ahmed Saeed Mahmoud Al-Badie Al-Dahari

(United Arab Emirates)

This document is an original of the Final Award rendered in conformity with the Rules of Arbitration of the ICC International Court of Arbitration.

INTERNATIONAL COURT OF ARBITRATION
OF THE
INTERNATIONAL CHAMBER OF COMMERCE

FINAL AWARD
in
ICC Arbitration Case No. 19683/AGF/ZF

Between

Cerner Middle East, Ltd. (Cayman Islands) – Claimant

and

1. iCapital, LLC (UAE) – Respondent No. 1; &
2. Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari (UAE) – Respondent No. 2

THE ARBITRAL TRIBUNAL

Dr. Nael G. Bunni (President)
Mr. Andrew de Lotbinière McDougall
Dr. Omar Isam Al-Taher

Paris, France 16th July **2015**

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TABLE OF ABBREVIATIONS
used in this Final Award

Abbreviation	Description/Meaning
AMS	Application Management Services
Belbadi Enterprises LLC	Guarantor to iCapital LLC in the SPA
CBA	Cerner Business Agreement
Cerner	Cerner Middle East Limited, the Claimant in these arbitration proceedings
Citrix	Citrix is a company specialising in networking and desktop virtualisation technology. The Claimant is a longstanding customer of Citrix.
Court	The International Court of Arbitration of the International Chamber of Commerce
EARs	Event Activity Reports
FPU	First Productive Use
iCapital LLC	Respondent No. 1 in these arbitration proceedings. iCapital LLC was trading, prior to the time in or around the middle of 2012 as iCapital S/E
iCapital S/E	A UAE Sole Establishment, as structured at the time up to a time in or around the middle of 2012
iCapital	The term used when the context requires that both iCapital S/E and the transformed iCapital LLC are referred to
ICC Case No. 18941/VRO/AGF	Reference to Arbitration dated September 2012 between Cerner Middle East Limited and iCapital S/E; iCapital LLC; and Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari
LSS	Licensed Software Support
MOH	The Ministry of Health
Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari	An individual and a citizen of the UAE, Respondent No. 2 in these arbitration proceedings
OMS	Operational Management Services
Rules	The Rules of Arbitration of the International Chamber of Commerce, effective as of 1st January 2012
SPA	The Settlement & Payment Agreement
Wareed Programme	The Health Information System Project

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DRAMATIS PERSONAE

Name	Position
Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari	Respondent No. 2 in these arbitration proceedings
Mr. Mohamed Al Badie Al-Dahari	The son of Respondent No. 2 in these arbitration proceedings
Mr. Matthew G. Allison	Baker & McKenzie LLP, Claimant's Counsel
Mr. Amro Y. Al-Deeb	The CEO of Respondent No. 1
Mr. Rich Berner	An Executive of the Claimant & original CBA signatory
Ms. Fiona Campbell	Al Tamimi & Company, briefly represented Respondent No. 1 at the beginning of these arbitration proceedings
Mr. Ziad Elhendi	An Executive Officer of iCapital's much larger affiliate, Belbadi Enterprises LLC
Mr. Feras Gadamsi	Claimant's Corporate Counsel & Witness of Fact
Mr. Steve Gallagher	Cerner, General Counsel
Mr. Charles S. Hallab	Baker & McKenzie LLP, Claimant's Counsel
Mr. James Massey	Claimant's Client Results Executive & Witness of Fact
Mr. Pascal Maygnan	Claimant's Finance Manager for the Middle East & Witness of Fact
Mr. Kyle R. Olson	Baker & McKenzie LLP, Claimant's Counsel
Mr. John Peterzalek	"*of the Claimant*"
Ms. Melanie Schueller	Baker & McKenzie LLP, Claimant's Counsel
Mr. Paul Turner	Al Tamimi & Company, briefly represented Respondent No. 1 at the beginning of these arbitration proceedings
Mr. Mike Vesser	"*of the Claimant*"
Mr. Greg White	Managing Director of Cerner at the time of the meetings that took place between the Parties in September 2012
Mr. Ramy M. Yousry	The Chief Operations Officer of Respondent No. 1
Mr. Anis Zerriny	Cerner, General Counsel

ICC Arbitration Case No. 19683/AGF/ZF

Between

Cerner Middle East Ltd. (Cayman Islands) – Claimant

and

1. iCapital LLC (UAE) – Respondent No. 1; &
2. Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari (UAE) – Respondent No. 2

RE-REVISED DRAFT FINAL AWARD

This Final Award is made in accordance with the Rules of Arbitration of the International Chamber of Commerce (effective as of 1st January 2012), referred to hereinafter as the "Rules".

1. PREAMBLES

1.1 THE PARTIES:

1.1.1 The Claimant:

The Claimant is Cerner Middle East Ltd., referred to hereinafter as "*the Claimant*". The Claimant is a Cayman limited company and a subsidiary of Cerner Corporation, a publicly traded US company. The contact details of Cerner Middle East Ltd. are as follows:

2800 Rockcreek Parkway,
Kansas City,
MO 64117,
United States of America.
Telephone: +1 816 201 0550
Fax: +1 816 571 0550
E-mail: melkins@cerner.com

1.1.2 The Respondents:

The Respondents are iCapital, LLC and Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari, hereinafter referred to collectively as "*the Respondents*". The first Respondent, iCapital LLC, hereinafter referred to as "*Respondent No. 1*", is a limited liability company domiciled in the United Arab Emirates. The contact details of iCapital, LLC, are as follows:

iCapital, LLC,
Full 13th Floor,
C1 Towers,
Behind Abu Dhabi Islamic Bank,
Al Bateen Street,

P.O. Box 37148,
Abu Dhabi,
United Arab Emirates.
Telephone: +971 2 658 1050
+971 2 621 8099
+971 2 681 2234
Fax: +971 2 658 1070
+971 2 681 4490
E-mail: aydeeb@icapital-group.com

The second Respondent, Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari,[1] hereinafter known as "***Respondent No. 2***", is an individual and a citizen of the United Arab Emirates, who, upon information and belief, owns 99% of the shares of iCapital LLC and the remaining 1% is owned by his son, Mr. Mohamed Al Badie Al Dahari. The contact details of Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari are as follows:

Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari,
P.O. Box 37148,
Abu Dhabi,
United Arab Emirates.
Telephone: + 971 2 634 9922
Mobile: + 971 50 622 2970
E-mail: asalbadi@belbadi.ae and ahmedsalbadi@gmail.com

and

c/o Belbadi Enterprises LLC,
13th Floor, C1 Tower,
Bainuna Street,
Al Bateen,
P.O. Box No. 27330,
Abu Dhabi,
United Arab Emirates
Telephone: +971 2 681 2234
Fax: +971 2 681 4490

1.2 AUTHORISED LEGAL REPRESENTATIVES FOR VALID NOTIFICATION AND COMMUNICATION:

1.2.1 Notifications and Communication

All notifications and communications arising in the course of, or connected with, this arbitration were deemed to have been validly made when they were sent as follows:

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[1] It should be noted that whilst Respondent No. 2 has been referred to consistently throughout these proceedings as Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari, it appears from the line below his signature on the Contract Agreement the subject matter of these proceedings and on the SPA as "***Ahmed Saeed Mahmoud Al-Badi Al-Dahari***", with the name "***Al-Badi***" written without an "*e*" at the end. This variation in the spelling of the name also appears in Messrs. Al Tamimi's letters to the Secretariat of 30th September 2013, referred to in paragraph 2.1.5 below; and of 2nd December 2013, referred to in paragraph 2.1.10 below.

(a) To the Claimant: by courier or by e-mail to the representatives of the Claimant, as detailed in paragraph 1.2.2 below;

(b) To Respondent No. 1: Until 27th February 2014, by e-mail or by courier to its representative, as detailed in paragraph 1.2.3 below; and after 28th February 2014, by either facsimile transmission or by e-mail sent to the following e-mail address: aydeeb@icapital-group.com;

(c) To Respondent No. 2: Until 19th February 2014, sent directly by courier and fax; and after 19th February 2014, by either facsimile transmission or by e-mail and sent to both of the following e-mail addresses: asalbadi@belbadi.ae & ahmedsalbadi@gmail.com; and

(d) To each member of the Arbitral Tribunal and to the ICC Secretariat, hereinafter referred to as "*the Secretariat*", at the relevant addresses indicated below, by e-mail or by courier, with searchable PDF or Word attachments, unless the attachments are too big to be sent by e-mail.[2] Furthermore, the President of the Arbitral Tribunal should be notified by fax when an e-mail has been sent to the Arbitral Tribunal.

1.2.2 **The Claimant:**

The Claimant has issued a Special Power of Attorney for Arbitration dated 6th February 2014 to, and is represented by, Messrs. Matthew G. Allison, Esq.; Charles S. Hallab, Esq.; & Kyle R. Olson, Esq. of Baker & McKenzie LLP, a law firm in Chicago, Illinois, whose contact details are as follows:

Baker & McKenzie LLP,
300 East Randolph Street,
Suite 5000
Chicago,
IL 60601,
United States of America.
Telephone: +1 312 861 8000
Fax: +1 312 861 2899
E-mail: matthew.allison@bakermckenzie.com;
charles.hallab@bakermckenzie.com; and
kyle.olson@bakermckenzie.com

1.2.3 **Respondent No. 1:**

Although Respondent No. 1 was at first represented by Ms. Fiona Campbell; and Mr. Paul Turner of Al Tamimi & Company, whose contact details are set out below, Ms. Fiona Campbell wrote on 11th February 2014 to advise that Respondent No. 1 declined to submit any Power of Attorney authorizing any person to arbitrate any matter on its behalf. Ms. Campbell also stated that Respondent No. 1 would not attend the Terms of Reference Hearing in Paris, which had been fixed for 19th March 2014, and that it considered the entirety of the proceedings to be a nullity. The contact details of Al Tamimi & Company are as follows:

Al Tamimi & Company,

[2] An e-mailed document should not be larger than 1 MB. Multiple e-mails should not be larger than 5 MB in which case the document should be sent on a disk or a memory key, by courier.

Advocates & Legal Consultants,
Dubai International Financial Centre,
Building 4 East, 6th Floor,
Sheikh Zayed Road,
P.O. Box 9275,
Dubai,
United Arab Emirates.
Telephone No.: +971 4 364 1641
Fax: +971 4 364 1777
E-mail: f.campbell@tamimi.com; &
p.turner@tamimi.com

1.2.4 **Respondent No. 2:**

Respondent No. 2 is not and was not represented by anyone, and there has been no communication from him to date. Until 18th February 2014, the President of the Arbitral Tribunal had been sending correspondence to Respondent No. 2 by courier, to the two Post Office boxes referred to in section 1.1.2 above; and by facsimile transmission. Respondent No. 2 accepted the correspondence up to the date of 13th February 2014. However, Respondent No. 2 began to reject the correspondence that was being sent by courier and so the Arbitral Tribunal wrote to the Parties on 18th February 2014, indicating this fact. The Claimant, by letter dated 19th February 2014, explicitly agreed that the Arbitral Tribunal's correspondence to Respondent No. 2 be henceforth sent only by fax. However, some correspondence continued to be sent by courier to Respondent No. 2, either due to its importance or size. The Transmission reports from the fax machine served as a form of proof that the faxes were being delivered. The rejected couriered letters to Respondent No. 2 were returned to the Tribunal and they are kept by the President of the Arbitral Tribunal. Thus, Respondent No. 2 has made no contact with the Arbitral Tribunal.

It is of note that Respondent No. 2 has admitted receiving correspondence from the Tribunal by sending "read receipts" from 7th August 2014 onward.

For the avoidance of doubt, in its correspondence dated 4th October 2013, the Secretariat explicitly confirmed that the Request for Arbitration had been received by Respondent No. 2.

1.3 THE ARBITRAL TRIBUNAL

1.3.1 At its session on 23rd January 2014, the International Court of Arbitration of the International Chamber of Commerce, hereinafter referred to as the "*Court*", pursuant to Article 12(8) of the Rules, appointed all three members of the Arbitral Tribunal as follows:

- Mr. Andrew de Lotbinière McDougall,
  White & Case LLP,
  19, Place Vendôme,
  75001 Paris,
  France.
  Telephone: +33 1 5504 1504

Fax: +33 1 5504 1516
E-mail: amcdougall@whitecase.com

- Dr. Omar Isam Al-Taher,
  Al-Taher Law Firm,
  P.O. Box 930202,
  Amman 11193,
  Jordan.
  Telephone: +962 6 562 1015
  Fax: +962 6 569 2689
  E-mail: omar@altaherlaw.com

- Dr. Nael G. Bunni,
  42 Thormanby Road,
  Howth, County Dublin,
  Ireland.
  Telephone: +353 1 8391141
  Fax: +353 1 8391167
  E-mail: bunni@eircom.net

1.4 THE AGREEMENTS BETWEEN THE PARTIES FORMING THE SUBJECT MATTER OF THE DISPUTE

Due to their non-participation as explained in paragraphs 1.2.3 and 1.2.4 above, the Respondents did not provide any submissions and/or information that could be used in drafting the background to the relationship between the Parties and the disputes that have arisen between them. Therefore, the following material was taken solely from the Claimant's Request for Arbitration and its subsequent submissions. In these documents, the Claimant contended that:

1.4.1 *The Prime Contract*

On or about 7th October 2008, iCapital Sole Establishment, hereinafter referred to as iCapital S/E, executed a Health Information System Project Contract with the UAE Ministry of Health, hereinafter referred to as the "***MOH***", in respect of the largest public health initiative in the history of the UAE. This project became known as the "Wareed Programme".[3] Pursuant to this Contract, Respondent No. 1 became the general contractor for the Wareed Programme and responsible for subcontracting with third parties to provide the products and services necessary to create the consolidated electronic medical information platform.

1.4.2 *The Cerner Business Agreement (the CBA)*

On or about 27th September 2008, iCapital S/E entered into a contract, a sub-contract to the Prime Contract, with the Claimant for the design, installation, implementation and maintenance of the Wareed Programme's platform of health care information software solutions and related equipment. The CBA, which is a contract for the provision of software, equipment and services, is roughly 94 million US dollars, at the current

[3] iCapital S/E was later in or around the middle of 2012 reformed and re-structured into iCapital LLC, which is Respondent No. 1 in this arbitration. See further details in paragraphs 1.4.3, 3.5.8, 6.2.10, 7.3.12 to 7.3.14 below.

exchange rate of 3.6725 UAE dirhams to the US dollar. The CBA categorizes the different products and services to be provided by the Claimant and assigns a monetary value to each product or service, and schedules the Claimant's performance and iCapital S/E payment dates incorporating a series of "***Cerner System Schedules***" that specified the details of the contractual relationship between the Claimant and iCapital S/E, including detailed payment schedules, the Scope of Work and equipment Specifications. In accordance with the terms of the CBA there were specific date-based payments that were to be made by iCapital S/E to the Claimant, which, the Claimant alleges, iCapital S/E immediately defaulted on. Regardless of this, the Claimant argued that it acted in good faith and in an attempt to facilitate the implementation of the health initiative for the UAE MOH, it continued to perform and further, attempted to resolve the payment defaults through dialogue and compromise. Such dialogue ultimately proved unfruitful and in September 2012, in accordance with the terms of the CBA, the Claimant filed a Request for Arbitration with the ICC against three respondents, namely iCapital S/E; Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari (Respondent No. 2 in the within proceedings); and iCapital LLC (Respondent No. 1 in the within proceedings), seeking payment of more than US$50 million in unpaid invoices and accrued interest. In December 2012, prior to the filing of an Answer to the Claimant's Request for Arbitration by any of the three respondents, the Parties entered into a comprehensive settlement agreement which addressed both the overdue payments and the future payments that were to be made to the Claimant in respect of the CBA, referred to in the following paragraph as "***The Settlement & Payment Agreement***" or the "***SPA***".

1.4.3 ***The re-organisation of iCapital S/E into iCapital LLC***

In or around the middle of 2012, iCapital S/E re-organised itself from a sole establishment to a limited liability company and became known as iCapital LLC, which is Respondent No. 1 in this arbitration. This fact was recorded at clause (E) and paragraph 7 of the SPA which placed the obligations of the SPA and Amendment No. 5 of the CBA upon Respondent No. 1. Accordingly, reference to iCapital S/E after that date is made to iCapital LLC. The Effective Date of the SPA was 29th December 2012.

1.4.4 ***The Settlement & Payment Agreement***

The SPA agreement was entered into on or about 29th December 2012 by the Claimant, Respondent No. 1 and Messrs. Belbadi Enterprises LLC, of which Respondent No. 2 was noted to be the Chairman. The Claimant states that this agreement is reflective of the terms that were agreed as of 29th December 2012 regarding the sum of AED118,722,088.00 that was due and owing to the Claimant by Respondent No. 1. Further, the agreement set out a schedule by which Respondent No. 1 was required to make incremental payments towards the overdue amount of AED118,722,088.00 and further obliged Respondent No. 1 to provide a series of post-dated cheques to the Claimant as security for such incremental payments. The Agreement "***confirms that in the event that iCapital fails to make any such scheduled payment, the entire Overdue Amount accelerates and becomes immediately due***". Additionally, the Agreement provided that if Respondent No. 1 breaches its payment promise before full payment of the first three payments called for in the schedule, an agreed amount of Accrued Interest (AED28,684,772.00) will become immediately payable in addition to the entire Overdue Amount.

1.4.5 ***Amendment No. 5 of the CBA***

At the same time that the Parties entered into the SPA, a further document was drawn up by the Parties, amending the CBA and setting out the amounts due and those which were to become due from Respondent No. 1. Amendment No. 5 of the CBA included a series of comprehensive schedules, the Amendment catalogues: (a) payments due from Respondent No. 1 for past work (the "***Overdue Amount***"); (b) deferred payments for past work that is to be invoiced at a future date (the "***Deferred Amount***"); and (c) future payments for work to be performed (the "***Future Amount***" and collectively with the Deferred Amount, the Deferred and Future Amount as defined below). The Amendment also gives the Claimant the unambiguous and immediate right to terminate the CBA in the event that the Respondent No. 1 breaches any of its obligations under the SPA. In the event of termination, the Claimant is expressly granted the right to contract directly with the MOH with respect to the Wareed Programme. This document was executed by the Claimant and Respondent No. 1.

1.4.6 *Corporate Guarantees from Belbadi Enterprises LLC:*

As a condition precedent to the SPA, two separate Corporate Guarantees were issued by Messrs. Belbadi Enterprises LLC, of which Respondent No. 2 was noted to be the Chairman. These two guarantees were issued in respect of the Overdue Amount and all remaining amounts owed under the CBA respectively.

1.5 LAW AND LANGUAGE

1.5.1 The CBA included an arbitration clause, which was amended by Amendment No. 5, and which amendment is quoted in paragraph 1.5.3 below. Furthermore, the SPA included, in its Article 15, an arbitration clause, which is quoted in paragraph 1.5.2 below.

1.5.2 Article 15 of the SPA provides as follows:

"***The arbitration provision set forth in Amendment 5 to the CBA shall be applicable to this Agreement.***"

1.5.3 Section 9.3 of Amendment No. 5 of the CBA provides as follows:

"***Section 9.3***
Section 9.3 (Arbitration and Injunctive Relief) of the CBA is deleted in its entirety and replaced with the following:

"***Each Party to this Agreement hereby submits to binding arbitral proceedings in the event of a dispute to be heard under the exclusive jurisdiction of the International Chamber of Commerce ("the ICC") using the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect. The proceedings shall be heard by a panel of three (3) arbitrators, with each Party selecting an arbitrator and the two selected arbitrators selecting a third, independent arbitrator deemed appropriate to hear the dispute by the ICC. In the event the party-appointed arbitrators cannot agree on a third arbitrator, that arbitrator will be appointed by the ICC. The arbitration shall be conducted in the English language in Paris, France. The Parties may alter the venue for arbitration upon mutual written agreement no later than twenty (20) calendar days after receipt of notice by the non-initiating Party. The Parties agree not to interfere, obstruct, or otherwise impact the enforcement of a lawful, issued, binding, and non-appealable award issued by the arbitral panel in any jurisdiction worldwide. Each party to this***

Agreement irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. The arbitrators shall award the cost of arbitration and any attorneys' fees as just and appropriate except in cases where either Party is explicitly responsible for legal fees in this Agreement or the Settlement Agreement"."

1.5.4 Section 9.3 of the CBA, prior to being amended by Amendment No. 5, provided:

"***9.3** **Arbitration and Injunctive Relief.** In the event of a dispute between the parties, Cerner and Client agree to work cooperatively to resolve the dispute amicably at appropriate, mutually determined management levels. In the event that a resolution at such management levels does not occur and a party wishes to escalate to a formal dispute resolution forum, such party shall submit the dispute to binding arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect ("the ICC Rules"), as modified by the provisions of this Section 9.3. The seat of the arbitration shall be Paris, France and the language of the arbitration shall be English. The arbitrator shall have the authority to determine whether any such dispute is properly subject to resolution by arbitration. Judgment upon any award in such arbitration may be entered and enforced in any court of competent jurisdiction. Notwithstanding any provision of this Agreement to the contrary, Client acknowledges that any breach of Client's obligations with respect to Cerner's proprietary rights will result in an irreparable injury for which money damages will not be an adequate remedy and that, in such event, Cerner shall be entitled to injunctive relief in addition to any other relief a court may deem proper.*"

1.5.5 The applicable substantive law in these proceedings is the law of the USA, and in particular, the laws of the State of Missouri, as set out in Section 9.14 of the CBA, which states as follows:

"***9.14** **Governing Law:** This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Missouri, excluding Missouri's rules on conflict of laws that would apply the substantive law of another jurisdiction.*"

1.5.6 The language to be used in these arbitration proceedings is English, as indicated in Section 9.3 of Amendment No. 5 of the CBA, as quoted in paragraph 1.5.3 above.

1.6 PLACE OF ARBITRATION

1.6.1 As quoted in paragraph 1.5.4 above, Section 9.3 of the original un-amended CBA provided that the "***seat of the arbitration shall be Paris, France.***"[4] However, as quoted in paragraph 1.5.3 above, Section 9.3 of Amendment No. 5 of the CBA altered that wording to "***arbitration shall be conducted .... in Paris, France. The Parties may alter the venue for arbitration upon mutual written agreement no later than twenty (20) calendar days after receipt of notice by the non-initiating Party.***"

[4] It should be noted that the "*seat*" of arbitration is equivalent to the "*place*" of arbitration as defined under Article 18 of the Rules.

1.6.2 Following receipt of the Request for Arbitration, the Secretariat requested the Parties to indicate whether or not they agree on the Place of Arbitration, reminding them that failing agreement the Court would be invited to fix that Place in accordance with Article 18(1) of the Rules.

1.6.3 In its Answer to the Request for Arbitration dated 30th September 2013, Respondent No. 1 argued that without any prejudice to the jurisdictional challenge, on any interpretation of the clause, quoted in paragraph 1.6.1 above, the reference to Paris, France could only have been intended to acknowledge Paris as the location of the ICC to whose "***exclusive jurisdiction***" the Claimant purports to submit. Respondent No. 1 added that the clause does not appear in the SPA and therefore it does not mean that Paris must be the place of the arbitration. Furthermore, Respondent No. 1 argued that the purported arbitration clause in the CBA upon which the Claimant relied provided that "***the Parties may alter the venue for Arbitration upon mutual written agreement no later than twenty (20) calendar days after receipt of notice by the non-initiating Party***" and insisted that the arbitration must necessarily be conducted in the courts of Abu Dhabi, UAE, having regard to the laws applicable to the Parties, to their contractual relationship and to the subject matter of the Claimant's claims.

1.6.4 On 4th October 2013, the Secretariat requested the Claimant to provide its comments in relation to Respondent No. 1's views on the place of arbitration by 11th October 2013.

1.6.5 On 10th October 2013, the Claimant responded by insisting that Respondent No. 1's view that Paris, France should not be the place of the arbitration is "***an entirely frivolous contention***". It further confirmed that it had not agreed in writing to alter the venue for the arbitration and did not agree to conduct the arbitration in Abu Dhabi, or in any location other than Paris, France.

1.6.6 There was no response from Respondent No. 2 to the Secretariat's enquiry as to whether the Parties agreed on the Place of Arbitration. Accordingly, on 24th October 2013, the Secretariat wrote to the Parties and confirmed that the Court would be invited to fix the Place of Arbitration, in accordance with Article 18(1) of the Rules.

1.6.7 At its session of 14th November 2013, the Court held that the arbitration proceedings shall be conducted in Paris, France, which is referred to hereunder as the "***Place of Arbitration***" under the Rules.

2. HISTORY OF THE ARBITRAL PROCEEDINGS

2.1 PROCEDURAL HISTORY UP TO THE TRANSMISSION OF THE CASE FILE TO THE ARBITRAL TRIBUNAL

2.1.1 The Claimant filed its present Request for Arbitration on 23rd August 2013, hereinafter referred to as "***the Request***", with the Secretariat, pursuant to Article 4 of the Rules, against Respondents No. 1 and No. 2. In doing so, the Claimant selected Mr. Mark Baker of Norton Rose Fulbright LLP as its party-nominated arbitrator, and made the submissions summarised in section 3.2 below.

2.1.2 The Claimant sought in its Request an Award in excess of US$48 million against Respondent No. 1, including all costs, expenses and fees, and legal fees, related to the arbitral proceedings, contending that Respondent No. 1 is contractually obliged to pay under the SPA.

2.1.3 By letter dated 26th August 2013, the Secretariat acknowledged receipt of the Claimant's letter and Request dated 23rd August 2013 and assigned it the Case number 19683/AGF.

2.1.4 Pursuant to Article 4(5) of the Rules, on 30th August 2013, the Secretariat transmitted to both Respondents a copy of the Request for Arbitration and the documents annexed thereto, sent to the business address of Respondent No. 1, as given by the Claimant, The Secretariat requested an Answer to the Request from Respondent No. 1 and Respondent No. 2 within the stipulated time limit of 30 days.

2.1.5 On 30th September 2013, counsel for Respondent No. 1, Messrs. Al Tamimi & Co., acknowledged receipt of the Secretariat's letter of 30th August 2013 and the Claimant's Request. Al Tamimi & Co. was explicit that it represented only Respondent No. 1 and noted that Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari who was cited as Respondent No. 2 did not reside at, or receive any correspondence at, Respondent No. 1's address. Respondent No. 1 stated that Respondent No. 2 had, therefore, not been duly notified of any proceedings and was not a proper Respondent to the Arbitration. Furthermore, in this letter, Respondent No. 1 objected to the jurisdiction of the Secretariat and the Court to administer this arbitration and stated that it would challenge the jurisdiction of any Tribunal purportedly confirmed by the Court. Respondent No. 1 added that, should the Court decide to proceed to refer any question of jurisdiction of any claim to an Arbitral Tribunal, it requested an Extension of Time to submit its Answer to the Request for Arbitration and its Counterclaim. Further, Respondent No. 1 noted that the Claimant had nominated Mr. Mark Baker as its co-arbitrator and, therefore, it nominated Mr. Jonathan Wood of Reynolds Porter Chamberlain LLP as its co-arbitrator. Respondent No. 1 also made the submissions that have been summarised at paragraph 1.6.3 above in respect of the Place of Arbitration.

2.1.6 On 4th October 2013, the Secretariat wrote to all the Parties and, in response to Respondent No. 1's insistence that Respondent No. 2 could not be contacted through it, brought Article 3(2) of the Rules to their attention, "***[a]ll notifications or communications from the Secretariat and the arbitral tribunal shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by the other party. Such notification or communication may be made by delivery against receipt, registered post, courier, email, or any other means of telecommunication that provides a record of the sending thereof***". The Secretariat included the relevant delivery receipt that indicated that Respondent No. 2 had in fact received the Request for Arbitration at Respondent No. 1's address. The Secretariat also confirmed that, even though Mr. Jonathan Wood had not been jointly nominated by both Respondents and was only selected by Respondent No. 1, it would invite Mr. Jonathan Wood to complete the necessary documentation, which would then be sent to the Parties. In connection with Respondent No. 1's request for an extension of time for submitting an Answer to the Request for Arbitration, the Secretariat granted an extension of time until 1st November 2013, pursuant to Article 5(2) of the Rules. No additional Answer to the Request for Arbitration was submitted by Respondent No. 1 prior to this 1st November deadline.

2.1.7 On 17th October 2013, the Secretariat wrote to the Parties informing them that the two Respondents would be required to jointly nominate a co-arbitrator in accordance with Article 12(6) of the Rules. The Secretariat informed the Parties that, pursuant to Article 6(4) of the Rules, the issue of jurisdiction had been submitted to the Court for decision. The Parties were invited to submit comments concerning the jurisdictional contentions of Respondent No. 1 within seven days.

2.1.8 On 15th November 2013, the Parties were informed of the following decisions that had been made by the Court at its session of 14th November 2013:

- This arbitration would proceed against Respondents No. 1 and 2, in accordance with Article 6(4) of the Rules;
- Paris, France was fixed as the Place of the Arbitration, in accordance with Article 18(1) of the Rules; and
- The advance on costs was fixed at US$650,000.00, subject to later readjustments, in accordance with Article 36(2) of the Rules.

2.1.9 The Respondents were informed that they had 15 days from receipt of the letter of 15th November 2013 to jointly nominate a co-arbitrator. In connection with the advance on costs that was set, the Claimant was requested to pay US$175,000.00 (the remaining part of the advance on costs) and the Respondents were requested to pay US$325,000.00.

2.1.10 On 2nd December 2013, Respondent No. 1 maintained its challenge to jurisdiction in spite of the Court's decision of 14th November 2013. Respondent No. 1 also requested the Claimant and the Secretariat to refrain from contacting Respondent No. 2 through its address. In addition, Respondent No. 1 informed the Secretariat that it had become aware that the Claimant had issued proceedings against it, and others, in the courts of Abu Dhabi, UAE, for a substantial part of the same claims, being Abu Dhabi Commercial Case 2481/2013 filed on 18th September 2013.

2.1.11 By letter dated 4th December 2013, the Claimant wrote to the Secretariat requesting that, in spite of the Respondents' positions, Mr. Mark Baker be confirmed as its co-arbitrator in this arbitration, as the delay tactics being employed by the Respondents would result in the time for the Parties appointing their own co-arbitrators expiring and the Claimant would lose its right to appoint as a result.

2.1.12 On 20th December 2013, the Secretariat informed the Parties that, on 19th December 2013, the Court decided to apply Article 12(8) of the Rules and appoint all three members of the Tribunal.

2.1.13 On 24th January 2014, the Secretariat wrote to the Parties and informed them that, pursuant to Article 12(8) of the Rules, the Court, at its session on 23rd January 2014, appointed Mr. Andrew de Lotbinière McDougall and Dr. Omar Isam Al-Taher as co-arbitrators; and Dr. Nael G. Bunni as the President of the Arbitral Tribunal in this arbitration case. As the full provisional advance had been paid by the Claimant, the Secretariat forwarded to the Arbitral Tribunal the case file in this arbitration, in accordance with Article 16 of the Rules. This letter was also copied to the appointed Arbitral Tribunal.

2.1.14 In a second letter by the same date, 24th January 2014, addressed to the Arbitral Tribunal and copied to the Parties, the Secretariat provided all the relevant case information. The Arbitral Tribunal was also informed that, at its session of 14th November 2013, the Court, being *prima facie* satisfied that an arbitration agreement existed under the Rules, decided that this arbitration would proceed, in accordance with Article 6(4) of the Rules. The Tribunal was instructed to decide on its own jurisdiction, in accordance with Article 6(5) of the Rules.

2.2 PROCEDURAL STEPS LEADING TO THE TERMS OF REFERENCE

2.2.1 Having received the case file, in accordance with Article 13 of the Rules, on 29th January 2014, the Parties were informed of the Tribunal's intention to hold a Terms of Reference Hearing during March 2014 and were requested to confirm their availability to attend such a Hearing. The Parties were further directed to provide the Tribunal with their own Powers of Attorney.

2.2.2 In response to the Tribunal's letter referred to at paragraph 2.2.1 above, Respondent No. 1 wrote to the Tribunal on 30th January 2014setting out "***the First Respondent's usual objection to jurisdiction***" and requested the Tribunal to note that all steps in these proceedings (including all submissions made and correspondence entered into) were subject to Respondent No. 1's objection to the Arbitral Tribunal's jurisdiction.

2.2.3 On 30th January 2014, the Tribunal wrote to the Parties and acknowledged receipt of Respondent No. 1's objection to jurisdiction, and confirmed that the Tribunal had noted its contents. On that same date, the Claimant wrote to the Tribunal confirming its approval of the Tribunal's decision to send copies of all of its correspondence with the Parties to Respondent No. 2 at the two P.O. Box addresses, No. 37148, Abu Dhabi; and No. 27330, Abu Dhabi, that were known to belong to him.

2.2.4 On 4th February 2014, the Tribunal wrote to the Parties requesting the Respondents, firstly, to indicate whether they intended to provide any further response(s) to the Request for Arbitration or any documents in that connection; and requesting the Claimant, secondly, to indicate if it intended to submit any further documents. The Tribunal requested the Parties to note that any such documents should be provided by 12th February 2014.

2.2.5 On 10th February 2014, the Claimant sent its Original Power of Attorney to the President of the Tribunal, which was received on 14th February 2014.

2.2.6 On 11th February 2014, the Legal Representatives for Respondent No. 1, Messrs. Al Tamimi & Company, informed the Tribunal that, consistent with its Client's previous objections to the jurisdiction of the Tribunal, its Client declined its opportunity to submit a Power of Attorney authorizing any person to arbitrate any matter on its behalf. Accordingly, Respondent No. 1's Legal Representatives were not authorized to compromise the claims made in these proceedings nor to arbitrate any dispute with the Claimant, but only to communicate its Client's objections to this Arbitration and, to compromise and litigate disputes between the Parties in the appropriate jurisdiction elsewhere. The Tribunal was informed that Respondent No. 1 considered these arbitral proceedings to be a nullity, given that Respondent No. 1 never agreed with the Claimant to arbitrate any dispute whatsoever let alone in Paris and by this particular Tribunal. Respondent No. 1 considered that the "***ICC Court of Arbitration has grossly exceeded its competence and conducted itself irregularly and without any authority from the named Respondents. The seating of this Arbitration in Paris, the appointment and constitution of this Tribunal were seriously irregular and manifestly in breach of the arbitral mechanism for which the Claimant contends (albeit not a valid arbitration agreement with our client). Any act or conduct by this Tribunal is similarly a nullity. Our client is concerned that the Tribunal is perpetuating such errors and is in want of any jurisdiction whatsoever. We are instructed to inform members of the Tribunal respectfully that our client will not indulge these errors further or otherwise submit to any purported exercise of arbitral jurisdiction. Meanwhile, the Claimant pursues substantially similar claims in the Abu Dhabi courts and by this Arbitration engaged in an actionable abuse of process. For the avoidance of any doubt, iCapital LLC will not attend in Paris on either of the proposed dates 19 & 20 March 2014.***"

2.2.7 On 12th February 2014, the Claimant provided the Tribunal with additional submissions that it termed as "***an updated status of the extent of Respondents' breaches***", prior to the Terms of Reference Hearing. Additionally, referring to Respondent No. 1's communication set out at paragraph 2.2.6 above, the Claimant insisted that it was beyond dispute that both the SPA and the CBA, executed by Respondent No. 1, contained unambiguous and enforceable arbitration clauses that call for the arbitration of disputes before the ICC in Paris. Regardless of the fact that Respondent No. 1 confirmed it would not be in attendance at the Terms of Reference Hearing, the Claimant nevertheless requested that the Terms of Reference Hearing still be held.

2.2.8 On 18th February 2014, the President of the Tribunal wrote to the Parties to inform them that the courier service he had been using to send hard copies of the Tribunal's letters to Respondent No. 2 had confirmed that Respondent No. 2 had refused to accept delivery of letters dated 12th and 13th February 2014. In line with Article 3(2) of the Rules, the Tribunal accordingly requested the Claimant to confirm what it wished the Tribunal to do, which was to continue to send its letters to Respondent No. 2 by courier and fax or to send its letters to Respondent No. 2 by fax only. The Tribunal informed the Claimant of the cost involved in continuing to send the Tribunal's correspondence by courier to Respondent No. 2 in Abu Dhabi, as well as the cost of having the refused package returned to the President in Dublin. Furthermore, the Tribunal informed the Parties that the Terms of Reference Hearing would take place in Paris on the 19th of March 2014. The Tribunal requested the Parties to liaise with each other to agree on the venue of the Hearing and also the Transcript providers by 27th February 2014, failing which the Tribunal would determine same.

2.2.9 On 19th February 2014, the Claimant wrote to the Tribunal confirming that it had no objection to the Tribunal sending all future correspondence to Respondent No. 2 by fax only, noting that Respondent No. 2 had been duly notified of these arbitral proceedings pursuant to the Secretariat's letters of 4th October 2013, 15th November 2013 and 9th December 2013. The Claimant also confirmed that it would attempt to liaise with both Respondents in respect of the venue for the Terms of Reference Hearing and the identity of the Transcript providers, as had been requested by the Tribunal. Subsequently, all of the Tribunal's letters to Respondent No. 2 were sent by fax and/or email only.

2.2.10 On 27th February 2014, the Claimant wrote to the Tribunal, confirming that it had been in contact with Respondent No. 1 with respect to the Terms of Reference Hearing and informed the Tribunal that, in light of Respondent No. 1's objections to the entirety of these arbitral proceedings, Respondent No. 1, or any representative on its behalf, would not be present at the Terms of Reference Hearing scheduled to take place in Paris on 19th March 2014. In this regard, the Claimant requested that the Tribunal confirm the venue for the Hearing and offered the offices of Baker & McKenzie in Paris, France, as a potential venue for the Hearing. On 28th February 2014, the Tribunal declined the Claimant's offer of holding the Terms of Reference Hearing at the Paris Offices of Baker & McKenzie and accordingly confirmed that the Hearing should take place at The ICC Hearing Centre, 112 Avenue Kléber, 75016 Paris. Further, the Tribunal confirmed the Transcript Providers for the Hearing should be Messrs. Gwen Malone, Stenography Company, Distillery Building, 145-151 Church Street, Dublin 7.

2.2.11 On 1st March 2014, the Tribunal wrote to the Parties, addressing Respondent No. 1 and Respondent No. 2 directly in light of Messrs. Al Tamimi & Company's letter of 11th February 2014, set out at paragraph 2.2.6 above. The Tribunal confirmed that it intended that all future communications between it and Respondent No. 1 would be direct, but that Messrs. Al Tamimi & Company were being copied in on this letter, to allow Respondent No. 1 one further opportunity to decide whether or not it has a legal representative appearing in this arbitration on its behalf. Were the Tribunal not to hear otherwise, Messrs. Al Tamimi & Company were informed that this would be the last communication on which the Tribunal would copy to it. The Tribunal attached to this letter its Draft No. 1 of the Terms of Reference and Procedural Order No. 1, requiring the Parties' attendance at the Terms of Reference Hearing and the Procedural Meeting that would follow, which would include the case management conference in this arbitration, scheduled to take place on 19th March 2014 in Paris, France.

2.2.12 On 7th March 2014, the Claimant provided the Tribunal with its comments on Draft No. 1 of the Terms of Reference document. The Claimant reserved its right to propose additional modifications in advance of the Terms of Reference Hearing.

2.2.13 On 10th March 2014, the Tribunal acknowledged the Claimant's letter of 4th March 2014 and its comments on Draft No. 1 of the Terms of Reference. The Tribunal informed the Parties that the Claimant's comments had been considered, adjusted and incorporated into the Final Draft of the Terms of Reference, which was attached to the Tribunal's letter. The Tribunal repeated that it required all Parties to be present at the Terms of Reference Hearing in Paris, France, in the Suez Conference Room at the ICC Hearing Centre on 19th March 2014 at 10:00 am, in order to discuss the draft Terms of Reference and attempt to agree and sign the Final Version of the Terms of Reference document. The Parties were further requested to note that following the Terms of Reference Hearing a Procedural Meeting would take place to discuss and agree the management of the various steps in this arbitration, together with a provisional timetable in respect thereof.

2.3 THE TERMS OF REFERENCE HEARING

2.3.1 As had been confirmed in the Tribunal's letter of 18th February 2014, set out at paragraph 2.2.8 above, the Terms of Reference Hearing in this Arbitration, was held on 19th March 2014 at the premises of the ICC Hearing Centre, 112 Avenue Kléber, 75016 Paris, France and commenced at 10:00 a.m.

2.3.2 It was noted at the commencement of the Hearing that neither Respondent No. 1, nor Respondent No. 2 was present. The Claimant was represented by its legal representatives. Consequently, and following a brief introduction, the President advised all those in attendance that, pursuant to Article 26(2) of the Rules, which he read out, the Tribunal was nevertheless empowered to proceed with the Hearing despite the Respondents' absence. Further, the President explained that it was for this reason that Procedural Order No. 1 had been issued and clearly it had not been complied with by the two Respondents, contrary to Article 22(5) of the Rules. The President of the Tribunal further drew attention to the provisions of Articles 23(3), 24(1) and 26(2) of the Rules, all of which had been brought to the Respondents' attention within Procedural Order No. 1.

2.3.3 The Claimant, having already submitted to the Tribunal the original of its Power of Attorney on 10th February 2014, satisfied the Tribunal that Messrs. Baker & McKenzie had the requisite authority to act on the Claimant's behalf at the Hearing.

2.3.4 As explained at paragraphs 2.2.11 to 2.2.13 above, the Tribunal had already circulated two successive drafts of the Terms of Reference document to the Parties. The Claimant had made comments on the first draft of the document, which the Tribunal had considered, adjusted and incorporated into the Final draft which had been sent to the Parties on 10th March 2014. No comments and/or amendments had been received by either Respondent on either of the draft Terms of Reference documents. Accordingly, there were only a number of minor amendments made to the draft that had been circulated to the Parties on 10th March 2014, following which nine originals of the Terms of Reference were prepared, initialled and signed by those present at the Terms of Reference Hearing.

2.4 THE PROCEDURAL MEETING FOLLOWING THE TOR HEARING, INCLUDING THE CASE MANAGEMENT CONFERENCE

2.4.1 Following the signing of the Terms of Reference, a Procedural Meeting was held on the same date, 19th March 2014, at the ICC Hearing Centre, 112 Avenue Kléber, 75016 Paris, which, as required under Article 24 of the Rules, went on to discuss and establish the procedural measures that might be appropriately adopted, pursuant to Article 22(2) of the Rules.

2.4.2 At the end of the Procedural Meeting, Procedural Order No. 2 was issued orally by consent of those present and was later confirmed in writing on 24th March 2014. Procedural Order No. 2 is summarised as follows:

- The issue of jurisdiction in this case would be decided ultimately in the Final Award;
- The rules regarding disclosure of documents were clearly set out;
- The date for submission of documents to be filed in this case were set out, including the format for such submissions, witness statements and expert reports;
- The evidentiary hearing would take place in Paris between 27th and 31st October 2014;

- A Hearing Bundle should be filed in advance of the Hearing, namely by 13th October 2014;
- The Tribunal reserved the right to schedule a pre-hearing meeting or conference call;
- The Claimant was directed to arrange the venue, the transcript and other administrative services related to the Hearing; and
- Standard instructions regarding costs and liberty to apply were also set out.

2.5 **THE PROCEDURE FOLLOWING PROCEDURAL ORDER NO. 2**

2.5.1 On 24th March 2014, pursuant to Article 23(2) of the Rules, the Secretariat informed the Parties and the Tribunal that the Court on 21st March 2014 had extended the time limit for establishing the Terms of Reference until 30th May 2014.

2.5.2 On 15th April 2014, in accordance with Order No. 3.2 of Procedural Order No. 2, the Claimant submitted its Notice requesting the production of documents from Respondent No. 1 and Respondent No. 2.

2.5.3 In the meantime, the Secretariat required a number of changes to be implemented in the Terms of Reference that had been submitted to the Court for its approval. The Tribunal made the necessary changes to the Terms of Reference and the Parties were then afforded the opportunity of providing any comments they may wish to make on the revised Terms of Reference. These comments were to be provided to the Tribunal by 17th April 2014. In the event, the Claimant commented by that date and, based on these comments, the Tribunal incorporated the necessary changes into the Terms of Reference and forwarded these revised Terms of Reference to the Parties on 18th April 2014 for their signature. The Claimant duly complied with the Tribunal's request, but neither Respondent did.

2.5.4 Furthermore, on 17th April 2014, the Tribunal issued Procedural Order No. 3 for the Parties' attention and compliance. Procedural Order No. 3 provided directions in respect of the procedural rules governing the arbitration, specifically in respect of the evidence and arguments that were to be presented to the Tribunal in this case. It provided that a verbatim transcript of all proceedings would be made and that the Tribunal could proceed with the arbitration and make an award in circumstances where any party failed to present its case or comply with a direction of the Tribunal. Procedural Order No. 3 also dealt with the liability of members of the Tribunal and ultimately stated that "***Either Party who knows that any provision of law from which the Parties may derogate has not been complied with and yet proceeds with the arbitration without stating its objection to such non-compliance within a reasonable time of that Party becoming aware of the non-compliance (or, if a time limit is provided therefor, within such period of time) shall be deemed to have waived its right to object.***"

2.5.5 In the end, on 10th May 2014, the Final Terms of Reference document, signed by all Members of the Tribunal and the Claimant was submitted to the Secretariat for approval by the Court.

2.5.6 The Terms of Reference document signed by the Claimant and the Arbitral Tribunal was approved by the Court on 28th May 2014. This document was forwarded by the Secretariat to each of the Respondents who were invited to themselves sign the document and return it to the Secretariat within 15 days.

2.5.7 At the request of the Claimant, and following no response from either Respondent, on 4th June 2014, the Tribunal requested the Parties to alter the date of the Hearing in this case and reserve the period between 6th and 10th October 2014 and between 17th and 20th November 2014.

2.5.8 Having received no documents from either of the two respondents in response to its request for disclosure of documents, the Claimant submitted on 6th June 2014 its Motion for Adverse Inferences from the Respondent's Non-Production of Evidence. The Tribunal acknowledged receipt of this Motion on 9th June 2014, and requested both Respondents to provide their responses to that Motion by 16th June 2014. No response however was received from either Respondent.

2.5.9 In accordance with paragraph 3.5 of Procedural Order No. 1, the Claimant submitted its Statement of Case together with Witness Statements from Mr. Feras Gadamsi; Mr. Jim Massey and Mr. Pascal Maygnan, and Exhibits on 17th June 2014.

2.5.10 The time limit for rendering the Final Award in this case was fixed by the Court at its session of 12th June 2014 for 27th February 2015, based on the Procedural Timetable that had been submitted. On 19th February 2015, this time limit was further extended to 30th April 2015 and subsequently on 16th April 2015, this time limit was further extended by the Court to 30th June 2015. Ultimately, on 24th June 2015, the time limit was extended to 31st July 2015.

2.5.11 On 6th August 2014, the Tribunal wrote to the Parties to inform them that it had just been established that Eid-Al-Adha would coincide with the first set of tentative dates for the scheduled Hearing in these Arbitral proceedings, i.e., between 6th and 10th October 2014. The Tribunal stated that since Respondent No. 1 is a UAE Company and Respondent No. 2 is a UAE Citizen, it would not be either feasible or appropriate to hold the Hearing on these dates. Accordingly, the Hearing in this case was again rescheduled to take place between 17th and 20th November 2014.

2.5.12 On 8th September 2014, the Tribunal wrote to the Parties and placed on record that neither Respondent No. 1 nor Respondent No. 2 had filed any Statement of Defence by the designated date in Procedural Order No. 1 or at all. Therefore there was no need for the Claimant to file a Reply to Defence and that the Tribunal intended to proceed, in accordance with paragraph 2.13 of Procedural Order No. 3, together with Article 6(8) of the Rules, with the arbitration in accordance with the procedural calendar already established on 24th March 2014 and that it would subsequently render a final award in this case.

2.5.13 On 29th September 2014, the Claimant filed a Supplemental Witness Statement of Mr. Pascal Maygnan, attesting to additional damages that the Claimant alleged had been incurred by it since the submission of Mr. Maygnan's original Witness Statement.

2.5.14 On 30th September 2014, the Claimant submitted a Request to the Tribunal in accordance with Article 25(6) of the Rules to decide the proceedings solely on the basis of the documents that had been submitted by the Parties and to:

(i) Issue a Final Award in these proceedings based on the documents submitted in lieu of an evidential hearing; and

(ii) Grant such other and final relief as is appropriate in the circumstances.

2.5.15 Although the Tribunal requested the Respondents to respond to the Claimant's application pursuant to Article 25(6) of the Rules, no response was received from either Respondent. Having considered the Claimant's application, the Tribunal decided on 10th October 2014 to reject it on the basis of Articles 22(4) and 41 of the Rules.

2.5.16 The Tribunal wrote to the Parties in connection with certain procedural matters related to the Hearing on 16th October 2014, which was scheduled to commence at 14:00 on 17th November 2014 in Paris. The Tribunal confirmed that no pre-hearing meeting was necessary and that the directions issued in Procedural Orders No. 2 and 3 would continue to apply.

2.5.17 In accordance with paragraph 3.9.4 of Procedural Order No. 1, and the extension of time subsequently granted to the Claimant by the Tribunal on 29th October 2014, the Claimant submitted written Opening Submissions on 6th November 2014 and provided a copy of the Hearing Bundle to the Tribunal. A further three additional documents were forwarded to the Tribunal by the Claimant on 13th November 2014, which it sought to add to the Hearing Bundle. This matter was ultimately dealt with by the Tribunal at the Hearing, discussed within section 8 below.

2.5.18 On 10th November 2014, the Claimant furnished the Tribunal with a copy of the CVs of the Witnesses of Fact who would be present at the Hearing to give evidence on the Claimant's behalf.

2.5.19 In accordance with paragraph 3.9.1 of Procedural Order No. 1, as amended by the Tribunal in its letter dated 6th August 2014, the evidentiary hearing took place at the ICC Hearing Centre, 112 Avenue Kléber, 75016 in Paris on 17th and 18th November 2014.

2.5.20 Also on 18th November 2014, the Claimant forwarded to the Tribunal a copy of Demonstrative Exhibit No. 1, which had been furnished to the Tribunal at the Hearing that day.

2.5.21 On 21st November 2014, the Tribunal forwarded the transcripts of the Hearing to the Parties in this case, along with the scanned, signed Reporter's Certificate. The Tribunal noted that as neither Respondent in this case had attended the Hearing, they should read the transcripts carefully, and note specifically the programme that was to be followed in this arbitration from that point forward. In particular, the Tribunal drew reference to the date for submission of the Post-Hearing Submissions and the fact that such submissions should contain a section on Costs.

2.5.22 The Claimant submitted on 9th December 2014 its Post-Hearing Submissions. However, the Claimant failed to provide a complete section on Costs therein and submitted instead a footnote. Consequently, the Claimant was required to, and did, file Supplemental Post-Hearing Submissions specifically relating to the issue of Fees and Costs on 19th December 2014.

2.5.23 The Tribunal, having received the Claimant's Supplemental Post-Hearing Submissions, wrote to the Parties on 22nd December 2014 and informed them in accordance with Article 27 of the Rules, the Tribunal was satisfied that the Parties in this case had been afforded a reasonable opportunity to present their respective cases and accordingly, declared the proceedings closed with respect to matters that were to be decided in the Final Award. Accordingly, the Tribunal informed the Parties that no further submissions or arguments may be made or evidence produced, unless authorized by the Arbitral Tribunal. The Tribunal confirmed that it would proceed to issue and render its Final Award in this case.

3. INITIAL SUMMARY OF THE PARTIES' RESPECTIVE POSITIONS

3.1 BACKGROUND, ACCORDING TO THE CLAIMANT

As already stated within section 1.4 above, due to their non-participation as explained in paragraphs 1.2.3 and 1.2.4, the Respondents did not provide any submissions and/or information that could be used in drafting the background to the relationship between the Parties and the disputes that have arisen between them. Therefore, the following material was taken solely from the Claimant's Request for Arbitration and its subsequent submissions. In these documents, the Claimant contended as set out in the following paragraphs in this section.

3.1.1 As stated within section 1.4 above, the Claimant submitted that in or around 7th October 2008, iCapital S/E, as a prime contractor, executed a Contract, with the MOH of the UAE, for the Health Information System Project for the Wareed Programme. The Prime Contract provided for milestone-based payments from the MOH to the prime contractor, which meant that the latter was paid when specifically defined portions of the Wareed Programme were installed and implemented. iCapital S/E, in turn, subcontracted with the Claimant, to design, install, implement and maintain the Program's platform of health care information software solutions and related equipment. The agreement between the Claimant and iCapital S/E was comprehensively documented in a subcontract, the CBA, as has been more precisely set out within paragraph 1.4.2 above.

3.1.2 Pursuant to the CBA, the Claimant stated that it had been tasked with deploying, implementing and maintaining the key licensed software that would allow health care information to be accessible to and utilised by UAE medical professionals on an integrated electronic platform. The Claimant granted Respondent No. 1 a software license; provided related hardware and equipment; and delivered specifically defined installation, implementation, maintenance, support and other professional services.

3.1.3 The CBA provided for specific date-based payments by iCapital S/E to the Claimant who insisted that its right to receive payment from iCapital S/E and iCapital LLC, Respondent No. 1, for its performance was not contractually dependent upon the receipt of payment from the MOH to the prime contractor, iCapital S/E.

3.1.4 In September 2008, the Claimant delivered the software called for under the CBA and began its implementation efforts. The Claimant submitted that it worked exhaustively to meet its obligations under the CBA, despite delays for which it was not responsible. Further, the Claimant argued that at all times it fully committed its staff to the completion of the Wareed Programme, which culminated in the implementation and acceptance of the Claimant's platform at all of the 14 hospitals included in the Wareed Programme.

3.1.5 As stated in paragraph 1.4.2 above, the Claimant submitted that, despite this, iCapital S/E and Respondent No. 1 defaulted on their explicit payment obligations and that, acting in good faith to facilitate the implementation of this important health initiative for the MOH, the Claimant continued its performance and attempted to resolve these payment breaches through dialogue and compromise. The Claimant alleged that the payment promises made by iCapital S/E and Respondent No. 1 had been made simply to induce the Claimant's continued performance.

3.1.6 The Claimant explained that iCapital S/E had repeatedly asserted that its financial woes were the result of the milestone-based payment schedule to which it had agreed with the MOH. Thus, despite no contractual obligation to do so, the Claimant indicated its qualified willingness to modify the payment schedule to demonstrate its continuing commitment to the MOH and the Wareed Programme.

3.1.7 The Claimant argued that it diligently performed under the CBA, while iCapital S/E and Respondent No. 1 continuously breached both the unambiguous payment terms of the CBA and their repeated written and oral promises to pay the Claimant's invoices which iCapital S/E and Respondent No. 1 explicitly acknowledged were past due and owing.

3.1.8 The Claimant added that ultimately, in September 2012, pursuant to the terms of the CBA, and in view of iCapital S/E's failure to pay more than AED180 million that was due and owing under the plain terms of the Parties' Contract, the Claimant filed a Request for Arbitration with the ICC against three respondents, namely iCapital S/E; Mr. Ahmed Saeed Mahmoud Al-Badie Al-Dahari (Respondent No. 2 in the within proceedings); and iCapital LLC (Respondent No. 1 in the within proceedings), seeking payment of more than US$50 million in unpaid invoices and accrued interest. That arbitration case was given the ICC Case number 18941/VRO/AGF, and is referred to hereunder by that case number.

3.1.9 The Claimant stated that the Respondents in ICC Case No. 18941/VRO/AGF were granted a series of extensions to respond to the Request for Arbitration and to name an arbitrator. On 29^{th} December 2012, prior to Respondent No. 1 filing a response, iCapital LLC and the Claimant entered into a comprehensive settlement agreement, the SPA, which was acknowledged by Belbadi Enterprises LCC, as Guarantor, concerning the claims in the arbitration that addressed both Respondent No. 1's overdue payments and future payments that would become due and owing under the CBA. The Settlement was documented in a series of documents, as set out in section 1.4 above, but for the sake of completeness, these documents were as follows:

- ***Settlement and Payment Agreement:*** This document has already been discussed at paragraph 1.4.3 above. It embodied the Parties' agreement that, as of the effective date of settlement, AED118,722,088.00 was due and owing from Respondent No. 1 to the Claimant. Further, the Agreement contained Respondent No. 1's explicit acknowledgement of the Claimant's full performance of the CBA up to the effective date of the Agreement.
- ***Amendment No. 5 of the CBA:*** This document has been discussed at paragraph 1.4.4 above.
- ***Two Separate Corporate Guarantees from Belbadi Enterprises LLC, the parent company of iCaptial:*** These two documents have been discussed at paragraph 1.4.5 above.

3.1.10 As part of the Settlement, the Claimant argued that Respondent No. 1, *inter alia*, explicitly:

- acknowledged its contract obligation to pay the Claimant;
- confirmed that the Claimant's contract performance to date was without breach, releasing any claims against the Claimant through the execution of the Settlement;

- promised to pay a contractually defined "***Overdue Amount***" of AED118.7 million on specified dates over 18 months;
- defined amounts to be invoiced over the next 18 months totalling AED112.3 million for both the Claimant's future performance and for deferred payment of the mutually agreed completed performance of the Claimant, the "***Deferred and Future Amount***"; and
- agreed that breach of its Settlement promises would accelerate the payment of all amounts due to the Claimant by Respondent No. 1, including an uncontested Accrued Interest Amount of AED28.7 million, which the Claimant was willing to permanently waive if Respondent No. 1 performed specifically defined obligations and covenants.

3.1.11 The Claimant acknowledged that the first two Overdue Amount payments scheduled in the Settlement on 29th December 2012 and 31st January 2013, respectively, were made but thereafter Respondent No. 1 failed to make the third payment, in the amount of AED34,750,490.00, which was due on 25th April 2013.

3.1.12 The Claimant submitted that, at the request of the MOH, it had provided a series of extensions of time for Respondent No. 1 to pay the third instalment, until 29th June 2013. However, Respondent No. 1 failed to make full payment by that date and the post-dated cheque presented for payment on that date failed to clear, in explicit breach of the SPA. This breach triggered the unambiguous acceleration clause of the SPA. In paragraph 29(e) of its Request for Arbitration, the Claimant submitted that pursuant to the plain terms of the SPA, the following amounts were at the time "***immediately owing***":

- the remaining Overdue Amount equal to AED77,722,000.00;
- the Agreed Accrued Interest Amount equal to AED28,685,000.00;
- the Deferred Amount equal to AED43,300,000.00;
- accrued and owing Future Amount equal to AED29,493,000.00; and
- further interest that has accrued on the amounts owed after the SPA which remain unpaid.

3.1.13 The Claimant stated that it intended to provide evidence of all amounts due and owing as a result of Respondent No. 1's breach of the SPA and of the CBA, but that the amount was in excess of AED180 million (AED179,200,000 plus interest).

3.2 SUMMARY OF THE CLAIMANT'S REQUEST FOR ARBITRATION

3.2.1 As stated in paragraph 2.1.1 above, the Claimant filed on 23rd August 2013 its Request with the Secretariat, pursuant to Article 4 of the Rules.

3.2.2 The Claimant provided brief background details to the Contract between the Parties and the subsequent disputes and claims that arose thereafter, which have already been summarised within section 3.1 above. The Claimant continued by making the contentions set out in the following paragraphs.

3.2.3 The Claimant brought this Arbitration for all damages suffered as a result of Respondent No. 1's breach of its unambiguous payment obligations, and, as explicitly provided for in the

SPA, for all costs and fees associated with the Claimant's efforts to collect these undisputed amounts.

3.2.4 The Claimant contended that Respondent No. 1's failure to pay the Claimant is a breach of Section 3.2 of Amendment No. 5 for the CBA and a breach of Section 5 of the SPA. In accordance with Section 4 thereof, the Overdue and Accrued Interest Amounts are immediately due and owing in full, and Respondent No. 1's failure to pay the amount is a breach of the SPA.

3.2.5 As a result of Respondent No. 1's breach, the Claimant is owed in excess of AED180,000,000.00 from Respondent No. 1.

3.2.6 Additionally, pursuant to Section 7.1(F) of the CBA and Section 5 of the SPA, both Respondents are liable to the Claimant for costs and attorney's fees relating to the collection of unpaid invoices.

3.2.7 The Claimant added that these amounts would continue to increase and the Claimant would present evidence of the exact amount owed by Respondent No. 1 at the time of the Hearing in this case. Respondent No. 2, the Claimant argued, was jointly and severally liable for that debt as the alter ego of Respondent No. 1.

3.2.8 The Claimant reserved the right to amend, supplement and augment the claims set out within its Request for Arbitration, and to submit such further pleading, arguments, exhibits and evidentiary material as may be appropriate or required in connection therewith.

3.2.9 The Claimant requested that the Arbitral Tribunal issue an Award that:

- Declares the Respondents to be jointly and severally liable for all amounts awarded;
- Awards all amounts due and owing under the CBA as of the date of the issuance of the Award, including interest at the maximum permissible rate under the CBA;
- Awards all costs, fees and expenses incurred by the Claimant in pursuit of the past due amounts, including all costs, fees, including legal fees and expenses, and expenses of these arbitration proceedings; and
- Awards any other relief that the Arbitral Tribunal deem just and appropriate.

3.3 **RESPONDENT NO. 1'S ANSWER TO THE REQUEST FOR ARBITRATION**

3.3.1 Respondent No. 1 filed its Answer to the Request for Arbitration on 30th September 2013 through Messrs. Al Tamimi & Co. Although its Answer explicitly confirmed that it was only submitted on behalf of itself, Respondent No. 1 attempted to make arguments with respect to Respondent No. 2.

3.3.2 As stated in paragraph 2.1.4 above, the Secretariat had sent the Request for Arbitration for Respondent No. 2 to the business address of Respondent No. 1, an address provided by the Claimant. Respondent No. 1 indicated in its Answer that Respondent No. 2 "***does not reside at or receive any correspondence care of our client's address***", and further went on to say that Respondent No. 2, being Mr. Al Dahari, was not duly notified of any proceedings and is not a proper Respondent to this arbitration. However, counsel for Respondent No. 1 added that Al Tamimi & Co. has no authority to make any statements or arguments on behalf of Respondent No. 2.

3.3.3 Respondent No. 1 stated that, for the avoidance of doubt, and always without prejudice to the challenge of the arbitral jurisdiction, which are set out and discussed within section 3.6 below, the Claimant's claims were denied and the cited Respondents bear no liability to the Claimant. Respondent No. 1 claimed that no genuine claims were made by the Claimant because the very contract alleged to have been breached, the SPA dated 29th December 2012, had been duly performed by Respondent No. 1 and was discharged in accordance with its terms. Respondent No. 1 added that by virtue of Clause 7 of the SPA, entitled "***Waiver and Release of Past Claims***", the Claimant was barred from pursuing any of the claims stated by it, according to Respondent No. 1.

3.3.4 It is to be noted that although the arguments presented in the Answer were purportedly made and submitted on behalf of Respondent No. 1 by Al Tamimi & Co. on 30th September 2013 within the preceding paragraphs above and also within section 3.6 below, Respondent No. 1 refused to provide Al Tamimi & Co. with any power of attorney with respect to this Arbitration.

3.4 RESPONDENT NO. 2: NO ANSWER TO THE REQUEST FOR ARBITRATION

3.4.1 Despite the fact that Respondent No. 2 had received the Request for Arbitration, as confirmed by the ICC Secretariat in its letter of 4th October 2013, Respondent No. 2 did not submit an Answer to the Claimant's Request for Arbitration.

3.5 THE CLAIMANT'S RESPONSE TO RESPONDENT NO. 1'S ANSWER

3.5.1 The Claimant submitted its Response to Respondent No. 1's Answer on 21st October 2013, and directly addressed the jurisdictional assertions made by Respondent No. 1 in that Answer, which are summarised within section 3.6 below. The Claimant made further additional submissions in its letter dated 12th February 2014, following the Tribunal's invitation on 4th February 2014, to both Parties to do so prior to the Terms of Reference Hearing.

3.5.2 In this letter, the Claimant repeated what it considered to be breaches by Respondent No. 1, namely: Undisputed Overdue Amounts; Deferred Payments; Future Payments; and Additional Amounts, as set out, briefly, in the Claimant's words, in the following paragraphs.

3.5.3 **Undisputed Overdue Amounts:** In connection with the Settlement between the Parties that ended the first arbitration proceedings, Respondent No. 1 expressly acknowledged the full and complete performance of the Claimant under the CBA up and through the date of execution of the SPA. The Parties agreed to liquidate the exact amount of funds due from Respondent No. 1 to the Claimant for that acknowledged performance, and Respondent No. 1 explicitly agreed those funds were due and owing, and specifically released any and all claims it purported to have with respect to those amounts. This framework is fully defined in the SPA that is an exhibit to the Request for Arbitration and these proceedings are to seek in part to enforce Respondent No. 1's promise to pay the Overdue Amount that was liquidated in that Agreement. Respondent No. 1's breach of its payment promises had caused the entire Overdue Amount to accelerate and it is now due and owing, as is a liquidated Accrued Interest Amount that the Parties also defined. Arbitral enforcement of Respondent No. 1's promises to pay the Overdue Amount set forth in the SPA and the Accrued Interest Amount set forth in the CBA should be prompt and without delay.

3.5.4 **Deferred Payments:** Similarly, the Parties created a category of amounts due from Respondent No. 1 known as Deferred Payments. These were amounts due for past performance by the Claimant for which the Claimant was willing to defer payment from Respondent No. 1, and was willing to issue new invoices to Respondent No. 1 pursuant to the schedule attached to Amendment No. 5 of the CBA. Since the initiation of these proceedings, certain Deferred Payments have become due and owing and the Claimant will present evidence of all amounts due at the time of the final hearing in this arbitration.

3.5.5 **Future Payments:** In addition to liquidating amounts due for performance prior to 29th December 2012, the Parties created a detailed framework for the continuation of the Wareed Programme and both the future performance by the Claimant and future payments by Respondent No. 1. The schedule for those payments is also set forth in Amendment No. 5 of the CBA. Certain Future Payment amounts have also become due and owing since the initiation of these proceedings for which the Claimant stated that it will present evidence of all amounts due at the time of the final hearing in this arbitration.

3.5.6 **Additional Amounts:** The Claimant stated that it will also present evidence of the amount of additional interest owed by Respondent No. 1, as well as amounts due for the contractually agreed legal fees and costs relating to the Claimant's enforcement of the Parties' settlement.

3.5.7 The Claimant stated that Respondent No. 1 has presented no substantive defences to the merits of the Claimant's payment demands. Respondent No. 1 has simply repeated a series of specious jurisdictional contentions as to why this matter should not proceed. The Claimant incorporated all of its previous contentions with respect to those arguments and reserved the right to further supplement those positions as this matter progresses.

3.5.8 As to Respondent No. 2, the Claimant asserted that whilst Respondent No. 2 has for the time being chosen not to participate in these proceedings and has submitted no response to the Claimant's Request for Arbitration, it is personally liable for the debts of Respondent No. 1 for the following reasons:

- Respondent No. 1 was previously structured as a UAE sole establishment which was 100% owned by Respondent No. 2. As sole proprietor of Respondent No. 1, Respondent No. 2 was personally liable for the debts and obligations of Respondent No. 1 under both US and UAE laws. The restructuring of iCapital S/E to iCapital LLC did not erase or extinguish the personal liability that Respondent No. 2 had to the Claimant for debts incurred by Respondent No. 1.
- Respondents No. 1 and 2 are mere alter egos of each other. They share a complete unity of interest and have disregarded the corporate form in their operations, in their management structure, and in their promises with respect to performance of the Amended CBA, as well as the SPA.

- Respondent No. 1 was inadequately capitalised and cannot be used as a vehicle for Respondent No. 2 to avoid personal liability for the debts of Respondent No. 1. As such, pursuant to Missouri law, which governs the Parties' commercial relationship, there is no legally recognisable distinction between Respondent No. 1 and Respondent No. 2.

3.6 THE PARTIES' SUBMISSIONS ON JURISDICTION

3.6.1 In its letter to the Secretariat, that accompanied its Request for Arbitration, the Claimant pointed out that the basis for ICC jurisdiction was set forth in the Request and in Amendment No. 5 of the CBA, which provides in the pertinent part the following text:
"***Each party to this Agreement hereby submits to binding arbitral proceedings in the event of a dispute to be heard under the exclusive jurisdiction of the International Chamber of Commerce (the "ICC") using the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect.***"

3.6.2 In its Answer to the Request for Arbitration, Respondent No. 1 challenged the jurisdiction of the Secretariat and the Court to administer these arbitration proceedings and stated that it would also challenge the jurisdiction of any Tribunal purportedly confirmed by the Court.

3.6.3 Respondent No. 1 also insisted that no valid arbitration agreement exists between the Parties, nor do the claims made by the Claimant fall within the scope of the arbitration clause for which the Claimant contended.

3.6.4 Respondent No. 1 requested the Secretary General of the Court, pursuant to Article 6(3) of the Rules, to refer the question of jurisdiction first to the Court for preliminary determination, noting the following allegedly unarguable facts:

- The Claimant did not contend and submitted no evidence that Respondent No. 2 was party or even signatory in his personal capacity to any document whatsoever, let alone that he is party to any arbitration agreement. The Claimant's attempt to join Mr. Al-Dahari, as Respondent No. 2, to the arbitral proceedings is a fiction and should be dismissed by the Court.
- The allegation that the Claimant made in its Request for Arbitration that there is an existing arbitration clause in Amendment No. 5 of the CBA annexed to the Request is irrelevant to this Arbitration – no claim arises or is connected in fact to this contract. The Claimant alleged breaches of the SPA. The SPA contains no arbitration agreement between the two companies. A mere reference to an alleged arbitration provision contained in another contract in respect of which no genuine claim is made does not render the subject claims within the scope of this ICC Arbitration.
- In any event, the signatory on behalf of Respondent No. 1 did not and does not have capacity or authority to agree to arbitrate any disputes and there is no valid incorporation of arbitration clauses in any contract executed by the company's CEO let alone any valid and binding arbitration agreement between Respondent No. 1 and the Claimant.
- The subject claims are not arbitrable under any applicable law. As mentioned above, the Claimant had stated no genuine substantive dispute between the Parties, which is capable of arbitration in any event.

On the basis of these submissions alone, Respondent No. 1 requested the Court to decide that, pursuant to Article 6(4) of the Rules, no arbitration agreement *prima facie* exists between any of the Parties cited and, accordingly, this arbitration cannot proceed.

3.6.5 Respondent No. 1 stated that, if a Tribunal were to be constituted, then a number of complex questions of competing arbitral and judicial jurisdictions would arise, including, but not limited to, the existence, validity and discharge of agreements, capacity of the Parties and the arbitrability of the stated claims. Complex questions of conflicts of laws applicable to the respective Parties, to the various contracts including the alleged arbitration agreement and the subject matter of the claims could also arise. The Respondent added that "***in light of collateral litigation, which the Claimant threatens to pursue***"[5], then it would be the submission of Respondent No. 1 to any Tribunal that this arbitration should be suspended forthwith pending an investigation and ascertainment of the conduct and outcome of collateral litigation in the UAE.

3.6.6 The Claimant dealt with Respondent No. 1's objection to jurisdiction within its Reply to the Answer to the Request submitted by Respondent No. 1 by firstly submitting that any arguments that Respondent No. 1 was attempting to make on behalf of Respondent No. 2 were improper as Respondent No. 1 cannot act as a proxy for the absent Respondent No. 2.

3.6.7 The Claimant went on to cite the express arbitration clauses contained in both the CBA and the SPA and noted that, contrary to the claims of Respondent No. 1, the Request for Arbitration unambiguously stated claims for breach of both the CBA and the SPA, specifically citing paragraphs 11-14, 29 and 31 of the Request for Arbitration.

3.6.8 The Claimant submitted that the arbitration clause within the CBA was explicitly and unambiguously incorporated by reference into the SPA, and that both Parties agreed to arbitrate any dispute concerning a breach of the SPA.

3.6.9 The Claimant contended that both Amendment No. 5 of the CBA and the SPA were executed on behalf of Respondent No. 1 by its CEO, Mr. Amro Y. Al-Deeb, and that Respondent No. 1 explicitly represented that it had the power and authority to enter into the agreements.

3.6.10 The Claimant noted that breach of contract claims are entirely arbitrable under the law applicable to both the CBA and the SPA and any assertion to the contrary was unfounded.

3.6.11 The Claimant added to these submissions in its letter of 12th February 2014, insisting that Respondent No. 1's continued assertions that the Tribunal is without jurisdiction to conduct these proceedings are false. The Claimant argued that it was beyond dispute that both the SPA and the CBA contain unambiguous and enforceable arbitration clauses that call for the arbitration of disputes before the ICC in Paris, France. The Claimant added that Respondent No. 1, with no support or explanation, purports to "***never having agreed with Cerner to arbitrate any disputes whatsoever let alone in Paris by this Tribunal***". The Claimant rejected this contention and pointed the Tribunal to the agreements between the Parties.

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[5] See page 3 of Respondent No. 1's Answer to the Request for Arbitration dated 30th September 2013.

4. COMMUNICATIONS WITH THE RESPONDENTS

4.1 From the outset of this arbitration, and the transfer of the File to the Arbitral Tribunal, there have been a number of issues in communicating with the Respondents, which are summarised below.

4.2 **Respondent No. 1**

4.2.1 As stated at paragraph 2.1.4 above, on 30th August 2013, Respondent No. 1 was notified by the Secretariat of the Request for Arbitration.

4.2.2 Respondent No. 1 acknowledged receipt of the Request for Arbitration and provided its Answer to the Request for Arbitration on 30th September 2014, that has been summarised within section 3 above.

4.2.3 Thereafter, and up to 11th February 2014, Respondent No. 1 was accepting communications in connection with these arbitral proceedings up until its Legal Representative's letter dated 11th February 2014, set out at paragraph 2.2.6 above.

4.2.4 The Claimant subsequently wrote to the Tribunal on 20th March 2014 informing it of a change of email address for Respondent No. 1, as had been notified to it by the Chief Operations Officer of Respondent No. 1, Mr. Ramy M. Yousry. As such, the Claimant notified the Tribunal that the correct email address for Respondent No. 1 should be aydeeb@icapital-group.com.

4.3 **Respondent No. 2**

4.3.1 As stated at paragraph 2.1.4 above, on 30th August 2013, Respondent No. 2 was notified by the Secretariat of the Request for Arbitration.

4.3.2 An issue regarding notification of the Request for Arbitration was raised by Respondent No. 1 in its Legal Representative's letter of 30th September 2013, discussed at paragraphs 2.1.5 and 4.2.2 above.

4.3.3 The Secretariat responded to the issue of notification on 4th October 2013 in its letter, which has been summarised at paragraph 2.1.6 above. However, this issue continued to be raised, prompting the Secretariat to write to the Parties on 9th December 2013, mainly in connection with the delivery of correspondence to Respondent No. 2. Respondent No. 1 maintained that Respondent No. 2 was not receiving correspondence at that address, but the Secretariat's courier service provided delivery receipts that proved that the correspondence sent by the Secretariat was delivered to the address that was provided for Respondent No. 2 and that he had been receiving correspondence at that address. The Secretariat informed the Parties that, unless it received an alternative/additional address for Respondent No. 2, it would continue sending correspondence to the address of Respondent No. 1 for its attention.

4.3.4 Following receipt of the case file by the Tribunal, it wrote to the Secretariat on 29th January 2014 pointing out that, having examined the Exhibits that were attached to the Claimant's Request for Arbitration, particularly the signature page under Tab 4, a company stamp for Belbadi Enterprises LLC, of which Respondent No. 2 owns 99%, had a recorded P.O. Box No. of 27330, Abu Dhabi. The Tribunal further informed the Secretariat that, having looked this company up on the internet, and established its address and contact number, the

President of the Tribunal, through his secretary made contact with this company and established that Respondent No. 2 was present at that address. Accordingly, the Tribunal proceeded to forward its letter of 29th January 2014, referred to above, together with a copy of the Secretariat's two letters of 24th January 2014 to Respondent No. 2 by courier at the recorded address, with a request for the shipment receipt upon delivery.

4.3.5 The Secretariat in response, on 29th January 2014, wrote to the Tribunal pointing out that pursuant to Article 3(2) of the Rules, communications by the Arbitral Tribunal and the Secretariat were to be made to the last address of the party or its representative for whom the communication is intended, and as notified by either the party in question or by the other party to the arbitration. Since Respondent No. 2 was not participating and the Claimant had only provided the Secretariat with the address that was thus far being used, the Secretariat had complied with Article 3(2). Therefore, the Secretariat suggested that prior to the Tribunal sending its correspondence to a different address, it should inform the Claimant of the above and the contents of Article 3(2).

4.3.6 The Tribunal duly did so on 30th January 2014, and requested the Claimant to note in the Exhibits attached to the Claimant's Request for Arbitration, particularly the signature page under Tab 4, a company stamp for Belbadi Enterprises LLC, of which Respondent No. 2 owns 99%, had a recorded P. O. Box No. of 27330, Abu Dhabi. Consequently, in view of Article 3(2) of the Rules, a copy of the Tribunal's correspondence with the Parties would be sent to both P.O. Box No. 37148 and P.O. Box No. 27330, subject to and until the Tribunal received the Claimant's comments and/or approval of such an action. On that same date, the Claimant wrote to the Tribunal confirming its approval of the Tribunal's decision to send copies of all of its correspondence with the Parties to the two P.O. Box addresses referred to above.

4.3.7 On 18th February 2014, the President of the Tribunal wrote to the Parties to inform them that the courier service he had been using to send hard copies of the Tribunal's letters to Respondent No. 2 had confirmed that Respondent No. 2 had refused to accept delivery of letters dated 12th and 13th February 2014. In line with Article 3(2) of the Rules, the Tribunal accordingly requested the Claimant to confirm what it wished the Tribunal to do, which was to continue to send its letters to Respondent No. 2 by courier and fax or to send its letters to Respondent No. 2 by fax only. The Tribunal informed the Claimant of the cost involved in continuing to send the Tribunal's correspondence by courier to Respondent No. 2 in Abu Dhabi, as well as the cost of having the refused package returned to the President in Dublin.

4.3.8 As already stated at paragraph 2.2.9 above, on 19th February 2014, the Claimant confirmed that it had no objection to the Tribunal sending all future correspondence to Respondent No. 2 by fax only, noting that Respondent No. 2 had been duly notified of these arbitral proceedings pursuant to the Secretariat's letters of 4th October 2013, 15th November 2013 and 9th December 2013.

4.4 Consequently, and as indicated within section 1 above, all notifications and communications arising in the course of, or connected with, this arbitration were deemed to have been validly made when they were sent as follows:

- To Respondent No. 1: Until 27th February 2014, by e-mail or by courier to its notified legal representatives, Messrs. Al Tamimi & Co., as detailed in paragraph 1.2.3 above; and after 27th February 2014, by either facsimile transmission or by e-mail sent to the following e-mail address: aydeeb@icapital-group.com;

- To Respondent No. 2: Until 19th February 2014, sent directly by courier and fax; and after 19th February 2014, by either facsimile transmission or by e-mail and sent to both of the following e-mail addresses: asalbadi@belbadi.ae & ahmedsalbadi@gmail.com.

5. THE ISSUES SET OUT IN THE TERMS OF REFERENCE

5.1 Section 5 of the Terms of Reference, as signed, identified the Issues in this arbitration, as follows:

"*5.1 Does the Arbitral Tribunal have jurisdiction?*

5.2 If the answer to the question in paragraph 5.1 above is in the affirmative, then is the Claimant entitled to any of the relief it claimed in its Request and set out in section 3 above?

5.3 By whom, and in what proportions, are the costs of the arbitration to be borne, as defined in Article 37 of the Rules?"

6. THE PARTIES' SUBMISSIONS

6.1 THE CLAIMANT'S STATEMENT OF CASE

6.1.1 As stated at paragraph 2.5.9 above, on 17th June 2014, the Claimant filed its Statement of Case in this Arbitration.

6.1.2 The Claimant began its Statement of Case by providing a brief summary of the dispute between the Parties, all of which has already been summarised within section 3.1 above. The Claimant made reference to the settlement of what it termed as the "***first arbitration***", which is set out at paragraphs 3.1.8 to 3.1.10 above; and argued that the comprehensive settlement documents that created the agreement between the Parties did as follows:

- Fully warranted that Respondent No. 1 (iCapital LLC) had the requisite authority to execute such SPA;
- The documents had been signed by the CEO of Respondent No. 1 pursuant to an explicit Power of Attorney; and
- Contained unambiguous promises to arbitrate any and all of the disputes.

6.1.3 The Claimant pointed out that once Respondent No. 1 had defaulted on the renewed payments (pursuant to the settlement of the first arbitration), it was in breach of its payment obligations under both the SPA and Amendment No. 5 of the CBA. Accordingly, the Claimant had effectively been forced to recommence arbitration proceedings in order to enforce its rights in these current arbitral proceedings. The Claimant added that both Respondent No. 1 and Respondent No. 2 had chosen a different strategy in this arbitration in that being cognizant of no factual or legal defence to their payment obligations, "***the Respondents now baldly***" assert that the ICC does not have jurisdiction over this dispute and have subsequently refused to participate in these proceedings.

The Tribunal's Jurisdiction

6.1.4 The Claimant submitted that the Court had found a *prima facie* agreement to arbitrate existed between the Parties and therefore, in accordance with Article 6 of the Rules, submitted any further jurisdictional disputes to the Tribunal for its consideration. The Claimant asserted that the ICC has jurisdiction over this dispute and further that the Tribunal could proceed to render an award in favour of the Claimant.

6.1.5 **The Tribunal's Jurisdiction in respect of Respondent No. 1**: The Claimant based its assertion that the Tribunal had jurisdiction in respect of the dispute between the Claimant and Respondent No. 1 on the following submissions:

(i) In accordance with Sub-section 9.3 of Amendment No. 5 of the CBA, quoted at paragraph 1.5.3 above, which the Claimant reminded the Tribunal, had been signed by the Claimant and Respondent No. 1, both Respondent No. 1 and the Claimant were bound to arbitrate any and all disputes between them in respect of the CBA. The Claimant added that Missouri law, which was the law governing the dispute between the Parties, encourages the use of arbitration to resolve disputes and in this respect made reference to the decisions in two cases, namely

State ex. rel. MCS Building Co. v. KKM Medical[6] and *Estate of Athon v. Conseco Fin. Servicing Corp.*[7]

(ii) The Parties had incorporated the full arbitration clause of the CBA into the SPA that confirmed the Claimant's full performance and liquidated the amount that was overdue to the Claimant. The SPA, the Claimant submitted, expressly provided that the arbitration provision contained within Amendment No. 5 of the CBA would apply to the SPA. Both of these documents had been signed by the Claimant and Respondent No. 1 to resolve the initial arbitration and although Respondent No. 1 had received a number of extensions to submit its Answer to the Claimant's initial Request for Arbitration, it had not asserted that in those proceedings the ICC did not have the requisite jurisdiction over the dispute.

(iii) The Claimant's Request for Arbitration clearly provided that the Claimant's claim was in respect of a breach of both the CBA and the SPA, and as such the arbitration agreements between the Parties had been appropriately invoked and the jurisdiction of the ICC and therefore, this Tribunal was fully established.

6.1.6 Whilst the Claimant argued that there was an unambiguous, binding arbitration clause in existence between the Parties and that as such, there could be no doubt but that the Tribunal had jurisdiction in this matter, it nonetheless responded to the arguments that had been made by Respondent No. 1 in this respect. Firstly, the Claimant rejected Respondent No. 1's assertion that the arbitration clause in the CBA was irrelevant to the within proceedings, branding such an argument as being "***without merit***". The Claimant requested it to be noted that Respondent No. 1 had acknowledged the arbitration clause within the CBA and further, had not argued that such a clause was not binding on the Parties. The Respondent instead appeared to the Claimant to be making the argument that since the remedy being sought by the Claimant was pursuant to the SPA, the arbitration clause within the CBA was irrelevant. The Claimant dismissed such an argument on the basis that it was basing its case on a breach of both the CBA and the SPA. Respondent No. 1's failure to make payments to the Claimant was, according to the Claimant, a breach of both agreements and further, the language of the SPA could not be clearer, particularly where it provides under Section 5 that a default under that section would constitute a cross-default of the CBA. The Claimant also referred to Sub-section 3.2 of the CBA which provided that the payment schedule was as per Exhibit B to Amendment No. 5 of the CBA, which identifies the Overdue Amounts, Deferred Payments together with the Future Payments, that were to be paid by Respondent No. 1.

6.1.7 The Claimant further rejected Respondent No. 1's assertion that the SPA contained no arbitration agreement. The Claimant argued that the SPA contained a plain statement that disputes concerning its performance were to be governed by the arbitration clause contained within Amendment No. 5 of the CBA. In support of its argument that the arbitration clause within the CBA applied to the SPA, the Claimant relied on Missouri law and made reference to a number of decisions in support of this position.[8]

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[6] 896 S. W. 2d 51, 53 (Mo. App. 1995).
[7] 88 S. W. 3d 26, 30 (Mo. App. 2002).
[8] *Barton Enters v. Cardinal Health, Inc.*, 2010 U.S. Dist. LEXIS 52435 (E.D.Mo. 2010); *Trantham v. Old Republic Ins. Co.*, 797 S.W.2d 771, 774 (Mo. Ct. App. 1990); *Polychronakis v. Celebrity Cruises, Inc.*, 2008 U.S. Dist. LEXIS 102760 (S.D. Fla. 2008); *DeOrnellas v. Aspen Square Mgmt., Inc.* 295 F. Supp. 2d 753, 764 (E.D. Mich. 2003); and *Rosemann v. Sigillito*, 877 F. Supp. 2d 763, 774 (E.D. Mo. 2012).

6.1.8 Finally, the Claimant rejected Respondent No. 1's assertion that the signatory to the Agreement did not have the requisite capacity or authority to sign on its behalf. The Claimant submitted that Mr. Amro Y. Al-Deeb, who is identified within both agreements as the Chief Executive Officer of Respondent No. 1, had executed both Amendment No. 5 of the CBA and the SPA. Further, the Claimant submitted that Respondent No. 1 had delivered to the Claimant a Power of Attorney that gave Mr. Al-Deeb the authority to act on Respondent No. 1's behalf in connection with the SPA.[9] The Claimant also argued that Respondent No. 1 expressly warranted within the SPA that it had the full corporate power and authority to enter into this agreement and to carry out the obligations therein. Finally, the Claimant rejected Respondent No. 1's assertion that claims relating to post-dated cheques were not arbitrable under any law on the basis that the Claimant's claims in the within proceedings related to Respondent No. 1's failure to make payment of monies due and owing to the Claimant in breach of contract which, under Missouri law, was irrefutably arbitrable.[10]

6.1.9 **The Tribunal's Jurisdiction in respect of Respondent No. 2**: The Claimant accepted that whilst Respondent No. 2 was not a direct contracting party to either the CBA or the SPA, Respondent No. 2 was nevertheless bound to the arbitral provisions of both agreements because he was "***the alter ego of***" Respondent No. 1. As such, following the decision in *CD Partners LLC v. Grizzle*[11], Respondent No. 2 can be bound by the agreement to arbitrate if he is the alter ego of a signatory to the agreement. The Claimant acknowledged that, generally, it would only be possible for the Claimant to enforce its contractual rights against Respondent No. 1 since Respondent No. 1 is a party to the contracts, the subject matter of these proceedings. However, the Claimant argued that there was an exception to such a rule, which would allow the Claimant to "***pierce the corporate veil***", if it is found that Respondent No. 2 exercised control and domination over Respondent No. 1, not only in terms of finances, but in respect of policy and business practices to such an extent that Respondent No. 1 has no separate mind, will or existence of its own. In such circumstances, once this has been established, Respondent No. 2 could be held liable for the contractual obligations and debts of Respondent No. 1.[12]

6.1.10 The Claimant argued that Respondent No. 1 was so dominated by Respondent No. 2 since Respondent No. 1 was formerly known as iCapital Sole Establishment, which was wholly owned by Respondent No. 2. As the sole proprietor of iCapital Sole Establishment, Respondent No. 2 was personally liable for the debts and obligations of iCapital Sole Establishment, under both US and UAE law. The Claimant added that the financial condition of Respondent No. 2 as joint obligor of Respondent No. 1 was a "***significant factor***" in the Claimant's willingness to execute the CBA and in its continued performance of its obligations despite Respondent No. 1's performance failures. The Claimant noted that iCapital Sole Establishment had undergone a re-structuring in circumstances where it appeared now to be a limited liability company.

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[9] The said Power of Attorney, together with a certified English translation of same, was submitted as Exhibit No. 6 to the Claimant's Statement of Case.

[10] In this respect the Claimant referred to and relied upon the decision of *Ken Bhelman Auto Servs. V. Reynolds & Reynolds Co.*, 2012 U. S. Dist. LEXIS 91154 (E.D. Mo. 2012).

[11] 424 F. 3d 795, 799 (8th Cir. 2005).

[12] See the decision in *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W.2d. 32, 40 (Mo. 1999); *Osgood v. Midewest Parking Solutions*, 2009 U.S. Dist. LEXIS 115730, 9-11 (E.D. Mo. 2009); and *Mobius Management Systems Inc. v. West Physician Search L.L.C.*, 175 S.W.3d. 186, 188-189 (Mo. App. 2005).

This re-structuring had taken place without notice to the Claimant in apparent violation of Sub-section 9.16 of the CBA. The Claimant insisted that such re-structuring did not excuse Respondent No. 2's individual liability for the existing obligations of Respondent No. 1[13], and accordingly the said re-structuring should be deemed to have no legal effect with respect to the amounts due to the Claimant in this case. In any event, the Claimant continued that both Respondent No. 1 and Respondent No. 2 shared a complete unity of interest and had disregarded any corporate form in their finances, their day-to-day operations and management, and in their obligations to perform under the CBA. The Claimant pointed out that Respondent No. 1 continued to operate exactly as iCapital Sole Establishment had done. It has the same offices, the same business purpose, the same employees, and as such, there should be no distinction in Respondent No. 2's personal liability for the debts of either entity. The Claimant argued that the Tribunal had the necessary discretion to make additional inferences to support the alter-ego argument as a result of both Respondents' failure to provide the documents that had been requested by the Claimant pursuant to Procedural Order No. 2. The Claimant requested the Tribunal to make such inferences and sought a series of findings in this regard, namely that:

- "***iCapital***" was at all relevant times to this dispute the alter ego of Respondent No. 2 who owned, managed and controlled "***iCapital***", such that "***iCapital***" has no separate mind, will or existence of its own;
- "***iCapital***" and Respondent No. 2 share a complete unity of interest and have disregarded any corporate form in their day-to-day operations and management and in their promises with respect to the performance of the CBA; and
- Respondent No. 2 is jointly and severally liable for all of "***iCapital's***" debts and obligations to the Claimant in respect of the Wareed Programme.

6.1.11 The Claimant made the additional argument that under Missouri law, it was possible for a court to disregard the existence of a corporate entity when it was operated whilst undercapitalised, which the Claimant submitted, Respondent No. 1 was.

6.1.12 The Claimant then provided "***Additional Facts supporting Award***" in its favour. At the outset of this section, the Claimant submitted that "***[g]iven the performance acknowledgement contained in the SPA, [the Claimant] need not present any detailed proof of its performance prior to October 31, 2012***" and that given the Respondents' refusal to participate in these proceedings "***the attestations contained in the ... Witness Statements concerning post-settlement performance by [the Claimant] are uncontested.***"[14]

6.1.13 The Claimant again went into detail surrounding the background to the dispute all of which has been summarised within section 3.1 above. The Claimant argued that it had established the existence of a binding contract, in this case, two binding contracts – the SPA and the CBA. Further, the Claimant had established the breach of both of those contracts and the damages arising from that breach by simple reference to the irrefutable and unambiguous payment schedules contained within the Agreement.

6.1.14 The Claimant argued that given Respondent No. 1's irrefutable and unambiguous

[13] See *Baker v. Dorfman* 2000 U.S. Dist. LEXIS 10142 (S.D.N.Y. July 21, 2000), aff'd, 232 F.3d 121 (2d Cir. 2000) and *Holland v. Fahnestock & Co. Inc.*, 210 F.R.D. 487, 500 (S.D.N.Y. 2002).

[14] See Claimant's Statement of Case, paragraph 35.

acknowledgement, admission and agreement, the Claimant was entitled to an Arbitral Award in the amount of **AED193,515,276.00** in damages for the Respondent's breach of contract. The Claimant submitted that this amount would increase following the Claimant issuing the final round of agreed invoices scheduled in Amendment No. 5 of the CBA. The Claimant accordingly requested the right to supplement its damage presentation at the close of evidence in these proceedings. Further, the Claimant sought an award of the Costs and Fees incurred in connection with this arbitration, and requested the right to present evidence of those amounts to the Tribunal at the close of evidence in this case.

6.1.15 It is important to note, that within a footnote, specifically footnote number 10, of its Statement of Case, the Claimant stated that it had "***received a judgment (sic) … against iCapital in the amount of 14.07 million AED***", representing the amount that was due and owing to it on foot of the third post-dated cheque that had been issued to it by Respondent No. 1. The Claimant added that it was "***not seeking a double recovery against iCapital, but merely seeking to vindicate the statutory UAE rights it has against iCapital. It is expected that iCapital will appeal the trial court judgment (sic), but, in the event that judgment (sic) becomes final and non-appealable prior to the submission of final evidence in this hearing, Cerner will reduce its demand by the amount of that judgment (sic).***" As of 9th December 2014, the date upon which the Claimant filed its Post-Hearing Submissions, the Claimant did not provide any evidence to the Tribunal that the Judgment was indeed appealed, as it had "***expected***". As such, the only evidence before the Tribunal in this respect is that the Judgment to the Claimant in the amount of AED14.07 million stands.

6.2 RESPONDENT NO. 1: NO STATEMENT OF DEFENCE

6.2.1 As stated at paragraph 2.5.12 above, on 8th September 2014, the Tribunal wrote to the Parties and placed on the record that Respondent No. 1 had failed to file a Statement of Defence in these arbitral proceedings, and confirmed that in accordance with Article 6(8) of the Rules together with paragraph 2.13 of Procedural Order No. 2, the Tribunal would proceed with the arbitration in accordance with the procedural calendar.

6.2.2 The Tribunal had requested Respondent No. 1 to provide any comments it may have wished to make to the Tribunal in this regard by 15th September 2014. No comments were received from Respondent No. 1.

6.3 RESPONDENT NO. 2: NO STATEMENT OF DEFENCE

6.3.1 As stated at paragraph 2.5.12 above, on 8th September 2014, the Tribunal wrote to the Parties and placed on the record that Respondent No. 2 had failed to file a Statement of Defence in these arbitral proceedings, and confirmed that in accordance with Article 6(8) of the Rules together with paragraph 2.13 of Procedural Order No. 2, the Tribunal would proceed with the arbitration in accordance with the procedural calendar.

6.3.2 The Tribunal had requested Respondent No. 2 to provide any comments it may have wished to make to the Tribunal in this regard by 15th September 2014. No comments were received from Respondent No. 2.

7. THE WITNESS STATEMENTS

7.1 As stated at paragraph 2.5.9 above, on 17th June 2014, the Claimant submitted its Statement of Case together with Witness Statements from Mr. Feras Gadamsi; Mr. Jim Massey and Mr. Pascal Maygnan, together with Exhibits thereto.

7.2 There were no submissions and no Witness Statements filed by either Respondent in these proceedings.

7.3 THE CLAIMANT'S WITNESS STATEMENT OF MR. FERAS GADAMSI

7.3.1 Mr. Gadamsi averred to the fact that he was formerly corporate counsel for the Claimant and held that position at all relevant times since the execution of the CBA between the Parties until his resignation from the Claimant on 15th April 2014. Mr. Gadamsi provided brief background details of the Claimant Company and the prime contract between Respondent No. 1 and the MOH. Mr. Gadamsi then provided information surrounding the execution of the CBA between the Claimant and Respondent No. 1 in September 2008.

7.3.2 Whilst acting as corporate counsel for the Claimant, Mr. Gadamsi stated that he had primary responsibility for legal matters arising from the CBA, together with any subsequent amendments, modifications, and other alterations thereto. Mr. Gadamsi was one of the Claimant's primary employees tasked with negotiating with Respondent No. 1 and its affiliate, Belbadi Enterprises LLC. He stated that he had been directly involved in the events leading up to the filing of the initial arbitration against, amongst others,[15] Respondent No. 1 in September 2012, in the negotiation and execution of the documents that resolved that initial arbitration, and in the events leading up to the filing of these current proceedings against Respondent No. 1 and Respondent No. 2.

7.3.3 In respect of the CBA and payments that were to be made thereunder, Mr. Gadamsi stated that the CBA explicitly provided for specific date-based payments by iCapital S/E to the Claimant. Mr. Gadamsi added that this payment structure had been the subject of detailed oral and written negotiations between iCapital and the Claimant prior to execution of the CBA, adding that the Claimant's right to receive payment from iCapital for its performance was ***not*** contractually conditioned in any manner upon iCapital S/E's receipt of payment from the MOH.

7.3.4 Mr. Gadamsi stated that in September 2008 the Claimant delivered the software called for under the CBA and began its implementation efforts. iCapital S/E, Mr. Gadamsi stated, was responsible under the CBA to secure the participation necessary to optimize the platform, but such participation was delayed, incomplete, and at times non-existent. Despite what Mr. Gadamsi deemed to be a significant obstacle, the Claimant worked diligently to keep the Wareed Programme on schedule but iCapital immediately defaulted on its explicit payment obligations. Nevertheless, and acting in good faith to facilitate the implementation of this important health initiative for the MOH, Mr. Gadamsi stated that the Claimant continued its performance and attempted to resolve these payment breaches through dialogue and compromise, only to discover that payment promises made by iCapital had been made simply to induce continued performance by the Claimant.

[15] See paragraph 3.1.8 above on ICC Case no. 18941/VRO/AGF.

7.3.5 Mr. Gadamsi stated that he had been involved in almost all of the discussions concerning modified payment plans proposed by iCapital S/E prior to the initiation of the first arbitration proceedings. iCapital S/E repeatedly asserted that its financial woes were the result of the milestone-based payment schedule to which it had agreed with the MOH, and that despite no contractual obligation to do so, the Claimant indicated its qualified willingness to modify the payment schedule to demonstrate its continuing commitment to the MOH and the Wareed Programme.

7.3.6 Mr. Gadamsi added that both iCapital, and its primary shareholder, Respondent No. 2, made express promises that iCapital would clear its debt to the Claimant and that Respondent No. 2 would guarantee that the Claimant would be paid. Because iCapital S/E was a sole establishment at that time, and because Respondent No. 2 was the sole proprietor of iCapital S/E, Mr. Gadamsi submitted that there was "***no legal distinction between the two Respondents***".[16] The Claimant relied upon these promises in its decision to forego a more prompt arbitral adjudication of its payment rights.

7.3.7 Subsequently, in or around the middle of 2012, Mr. Gadamsi stated that he learned that iCapital had purported to restructure itself as a LLC under UAE law. Further to the terms of the CBA, which prevented such a restructuring without the consent of the Claimant, Mr. Gadamsi stated:
"***I objected to the restructuring and denied any legal effect upon the personal obligation of Al-Dahari to pay the outstanding debts of iCapital at that time.***"[17]

Mr. Gadamsi explained that the position of Respondent No. 2 as a joint obligor of iCapital had been "***important***" to the Claimant's decision to execute the CBA and its willingness to continue to perform its obligations thereunder, despite iCapital breaches.

7.3.8 In the event, Mr. Gadamsi explained that in September of 2012, the Claimant submitted a Request for Arbitration with the ICC against iCapital S/E; Respondent No. 1; and Respondent No. 2, seeking recovery of in excess of US$50,000,000.00 in unpaid invoices and accrued interest. Prior to any of the three Respondents filing an Answer to the Claimant's Request for Arbitration, the Claimant and iCapital (being represented by Al Tamimi & Co.) agreed "***to enter into settlement negotiations that could not be used in any arbitration***"[18]. On foot of this agreement, Mr. Gadamsi and Greg White (Managing Director of the Claimant at the time) met with Mr. Ziad Elhendi, an executive officer of iCapital's much larger affiliate, Belbadi Enterprises LLC (also owned by Respondent No. 2), Respondent No. 2 himself, and Mr. Amro Al-Deeb in the lobby of the Rixos Hotel, The Palm, Dubai in late September 2012. The purpose of the meeting was to begin attempts to settle the dispute prior to proceeding with the next step in arbitration. Mr. Gadamsi was unable to recall with certainty if Messrs. Al Tamimi & Co. were representing both iCapital and Respondent No. 2 at the meeting, but it was his impression they had, "***especially considering the willingness of both iCapital and Al-Dahari to engage in settlement discussions only after an agreement not to use such discussions at the arbitration against both iCapital and Al-Dahari individually, was that Al Tamimi was acting for both Respondents at the time. Mr. Elhendi and Mr. Al-Dahari both stressed throughout the negotiations, along with Mr. Al-Deeb, that Belbadi Enterprises***

[16] See Witness Statement of Mr. Gadamsi, page 5, paragraph 12.
[17] See Witness Statement of Mr. Gadamsi, page 5, paragraph 13.
[18] See Witness Statement of Mr. Gadamsi, page 5, paragraph 16.

fully backed iCapital and that Mr. Al-Dahari had full management control over both enterprises. All deference was accorded to Mr. Al-Dahari with respect to ultimate decision-making by both Mr. Elhendi and Mr. Al-Deeb with respect to iCapital and Belbadi Enterprises each respectively."[19] (Emphasis original).

7.3.9 Following on from this meeting, in December 2012, Mr. Gadamsi stated that the Parties entered into a comprehensive settlement concerning the claims of the arbitration that addressed both iCapital's overdue payments together with future payments that would become due and owing under the CBA. Mr. Gadamsi confirmed that he had been directly involved in the negotiation of that settlement and the intention of the parties to both forever quantify the amount owed to the Claimant for past performance, and to reschedule iCapital's payment obligations for future performance.

7.3.10 Mr. Gadamsi provided details surrounding the execution of the SPA and Amendment No. 5 of the CBA. He stated that the purpose of the SPA was to address events prior to 31st October 2012,[20] and embodied the Parties' agreement that, as of that date, AED118,722,098.20 was due and owing from iCapital to the Claimant. This was expressly defined in the Agreement as the "***Overdue Amount***". Further, Mr. Gadamsi stated that the SPA contains iCapital's explicit acknowledgement of the Claimant's full performance of the CBA up to the effective date of the Agreement, and explicitly waived any claims of breach with respect to any past performance prior to the effective date of such agreement. Mr. Gadamsi added that the Parties also executed Amendment No. 5 of the CBA, which scheduled both a series of deferred payments and a series of future payments, for services that the Claimant was continuing to provide pursuant to the CBA. The exhibits to Amendment No. 5 identified the dates that each of the deferred and future payments were to be invoiced and paid, and identified the services performed by the Claimant within each invoice.

7.3.11 Mr. Gadamsi continued by stating that in order to satisfy the Overdue Amount recorded within the SPA, iCapital had provided the Claimant with a series of post-dated cheques that were to be presented for payment by the Claimant on specific dates defined in the SPA. The failure of any of those cheques to clear was deemed to be a breach of both the SPA and the CBA and the entire Overdue Amount would immediately become due to the Claimant by iCapital, including an uncontested Accrued Interest Amount of AED28.7 million that the Claimant had agreed to permanently waive if the first three post-dated cheques cleared as warranted[21].

7.3.12 In addition to the above, Mr. Gadamsi acknowledged that the SPA recorded that iCapital has re-organized itself from a sole establishment to a limited liability company and places the obligations of the SPA and Amendment No. 5 of the CBA upon Respondent No. 1. Mr. Gadamsi further acknowledged that Respondent No. 2 was not a signatory to the SPA or Amendment No. 5 of the CBA in his personal capacity as the former sole proprietor of iCapital, and he remained personally liable for the agreed Overdue Amount, which related

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[19] See Witness Statement of Mr. Gadamsi, page 6, paragraph 16.
[20] The date of 31st October 2012 is the date that the Parties deemed as the "***Overdue Amount Settlement Date***" and fixed the amount due to the Claimant as of that date. In this connection, see further in paragraph 7.4.3.
[21] See Witness Statement of Mr. Gadamsi, page 7, paragraph 20. The Tribunal notes that Mr. Gadamsi has rounded up the amount of the Accrued Interest. The exact amount, as per Article 3.3 of Amendment No. 5, is AED28,684,772.00.

16.

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to the Claimant's acknowledged performance prior to its consent to the restructuring of iCapital.

7.3.13 Mr. Gadamsi also detailed in his Witness Statement what he deemed to be the lack of corporate formalities maintained by iCapital and the lack of any substantive distinction between iCapital and its primary shareholder Ahmed Saeed Mahmoud Al-Badie Al-Dahari, Respondent No. 2 in this case. Mr. Gadamsi added that Respondent No. 1 was undercapitalized at the time of its formation in 2012, in that soon after its formation, in connection with the SPA, it presented past due cheques to the Claimant in the amount of AED118 million (more than US$32 million), with an express promise that funds would be available when the dates on the cheques came current, and yet it is now obvious that iCapital did not have sufficient funds for those payments. Mr. Gadamsi added that iCapital had also agreed to make future payments in excess of AED112 million on a series of dates over the 18 months following the execution of Amendment No. 5 of the CBA but it has failed to make any of those payments.

7.3.14 Mr. Gadamsi concluded his witness statement by submitting that Respondent No. 2, having reformed iCapital S/E as an LLC in a potential effort to insulate himself from personal liability for the increasing debts of iCapital S/E, was obligated to capitalize the company with sufficient funds to allow it to perform under its existing contractual commitments. Respondent No. 2 failed to do so, and has further failed to prove he had done so. Whilst Respondent No. 2 used employees from other entities to help lead the negotiations with the Claimant (allegations contained at paragraph 7.3.8 above), it was Respondent No. 2 himself who was the ultimate arbiter of decisions. Respondent No. 2 is the 99% shareholder of the newly re-organized iCapital LLC, Respondent No. 1 herein, and as such, wielded all power over iCapital S/E and its successor entity Respondent No. 1.

7.4 THE CLAIMANT'S WITNESS STATEMENT OF MR. JAMES MASSEY

7.4.1 Mr. Massey introduced himself as the Claimant's Client Results Executive since 2011 who has primary responsibility for the day-to-day activities associated with the Wareed Programme and with the Claimant's commercial relationship with iCapital. Mr. Massey confirmed that he has knowledge of the Claimant's performance under the CBA since its execution and acknowledged that whilst it was possible for him to testify about the Claimant's performance prior to 31st October 2012, this was unnecessary since iCapital had unambiguously acknowledged such performance to be complete and to be free of any breach as part of the settlement of the first arbitration proceedings initiated by the Claimant against iCapital. Mr. Massey stated that such an acknowledgement and the simultaneous liquidation of the overdue amounts to be paid to the Claimant from iCapital for the performance of its obligations had been critical consideration for the settlement. Mr. Massey added that the SPA (which had an Effective Date of 29th December 2012), had explicitly documented the settlement and definition of this debt and provides the schedule for iCapital's satisfaction of its admitted payment obligations to the Claimant.

7.4.2 As such, Mr. Massey's Statement only addressed the Claimant's performance under the amended CBA from 31st October 2012 to the present. In doing so, Mr. Massey provided a brief summary of key CBA performance milestones that had been achieved by the Claimant, pointing out that as of 31st October 2012, the Claimant had completed the implementation of its product portfolio (the Cerner Millennium System) in 12 of the 14 hospitals in the UAE (and one clinic) that had been part of the scope of work. The remaining two hospitals lacked sufficient electrical capacity to support a complete implementation, and a subset of the Cerner Millennium system had been implemented in those locations. At the time the SPA was executed, Mr. Massey stated that the Claimant had already received written acceptances from iCapital documenting the completion of the Claimant's implementation for these locations.

7.4.3 Mr. Massey stated that as part of the SPA, the Parties decided that the amounts due and owing to the Claimant in respect of its performed obligations at that time, should be defined and liquidated. Thus, the Parties deemed 31st October 2012 as the "***Overdue Amount Settlement Date***" and fixed the amount due to the Claimant as of that date. The reason for doing so, Mr. Massey submitted was due to the fact that both Parties wanted to avoid any future dispute about performance up to that date, so the SPA contained a release of any and all claims against each other -- whether asserted or unasserted, known or unknown -- from the time of the execution of the CBA through to 31st October 2012.[22] Mr. Massey repeated that this acknowledgement by iCapital was critical to the Claimant as a means of preventing any future attempt that may be made by iCapital to unwind its promise to pay the Claimant the fixed Overdue Amount.

7.4.4 Mr. Massey continued that the Parties had defined the services required to assist the implementation of the remaining Primary Healthcare Clinics and other facilities that iCapital needed to complete the fulfilment of its contract with the MOH and that this also formed part of the SPA.[23] In that regard Mr. Massey pointed out that since execution of the SPA, the power issues relating to the two hospitals described at paragraph 7.4.2 above have been resolved and the Claimant has completed the build-up and test of the Millennium system for one of those hospitals. Whilst Mr. Massey stated that this hospital has not yet "***gone live***"[24], this was as a result of iCapital's inability to complete other necessary work. In addition, Mr. Massey stated that the Claimant had implemented its suite of solutions into 29 clinics in the UAE, 23 of which had gone live. Mr. Massey pointed out that iCapital had signed off the Event Activity Reports (EARs) for First Productive Use (FPU) and for Acceptance of these locations, and that of the remaining 6 clinics, 4 have internet connectivity issues[25], which has prevented their full operation and 2 have not been implemented by iCapital. Mr. Massey explained that this meant that whilst the work on building and testing the Hospital and these six Clinics has been done, there is no written acceptance showing that the systems have been put into productive use.

7.4.5 Mr. Massey submitted that the Claimant remained ready and able to build all of the remaining 38 clinics contemplated as part of the Wareed Programme, but that iCapital does not have sufficient funds to purchase certain necessary hardware in order for that to happen, nor does it have sufficient qualified staff to do conversion support at those Hospitals or Clinics. Mr. Massey explained that the Claimant had stopped all "***new***" implementation work with respect to additional implementations, which falls under the

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[22] In this respect, Mr. Massey made reference to "***Whereas clause (E), and paragraph 7 of SPA***".
[23] Mr. Massey pointed out that iCapital specifically stated that they would not need additional support to do the conversion of the Clinics, as had been done with the Hospitals and as such, this effort was not included in the estimation of the future work required, other than some assistance with conversion support for the two remaining hospitals.
[24] This, Mr. Massey explained was a term used by the Claimant to describe when its products and services become operational.
[25] Mr. Massey stated that these issues did not form part of the Claimant's Scope of Work.

CBA category of Professional Service, as a result of iCapital's payment failures, but it has continued to provide the support services called for under the CBA. This includes services requested in addition to those agreed at the settlement, specifically Conversion Support at the Clinics. These additional service requests were documented in regular reports to iCapital Executives, but have not been invoiced.

7.4.6 Mr. Massey submitted that the CBA is a contract for the provision of software, equipment and services that total AED344 million.[26] The CBA categorizes the different products and services to be provided by the Claimant, assigns a monetary value to each product or service, and schedules the Claimant's performance and iCapital payment dates. When the Parties agreed to Amendment No. 5 of the CBA in connection with the settlement, they reconciled the AED344 million value of the CBA and identified:

a) Amounts that had already been paid by iCapital as of 10/31/2012;
b) Amounts that were part of the agreed Overdue Amount;
c) Deferred Payment amounts; and
d) Future Payment amounts.

7.4.7 Mr. Massey stated that as of 31st October 2012, iCapital had already paid AED113 million, and as such, the Parties had agreed to the fixed Overdue Amount at AED118.7 million. The remaining AED112.3 million was split between Deferred Payments (AED43.3 million) and Future Payments (AED69 million). In respect of **Deferred Payments**, Mr. Massey stated that this related to two categories of CBA services. Firstly, there were the Claimant's professional services that had not been performed when originally scheduled due to the lack of iCapital performance that would allow for such performance by the Claimant. Secondly, there were the Claimant's software support services, which had been performed, but not invoiced, prior to the SPA by mutual agreement. Amendment No. 5 of the CBA had defined these Deferred Payment amounts and scheduled when they would be invoiced[27] or when they were expected to be invoiced.[28] In respect of **Future Payments**, there were four defined types of services that the Claimant agreed to continue to perform despite the Overdue Amount that remained unpaid. Amendment No. 5 of the CBA set out when those amounts were due to be paid and specifically identified the different service categories that were to be included in each Future Payment.

7.4.8 Mr. Massey then set out the different product and services categories that make up the full value of the CBA, which were as follows[29]:

- **Cerner Licensed Software**: The sum of AED58.2 million of the CBA relates to the proprietary Millennium system software that the Claimant provided for the Wareed Programme. That software has been fully delivered by the Claimant and iCapital has paid AED53.8 million of the cost for this software. The remaining AED4.4 million that has not been paid forms part of the agreed Overdue Amount.

- **Equipment & Maintenance**: The sum of AED56.7 million of the CBA concerns related equipment and technology necessary to utilize the Cerner suite of software

[26] Which Mr. Massey pointed out equates to approximately US$94,000,000.00 at an exchange rate of AED3.6725 to US$1.00.
[27] In respect of the already performed Software Support.
[28] In respect of the Professional Services work that remained contingent upon iCapital performance.
[29] One additional category is "Managed Services" related to certain data hosting provided by the Claimant, but the contract amount for this category is only AED330,000, and it is part of the agreed Overdue Amount.

solutions. This included the main production and non production domains,[30] consisting of Citrix, application and database servers, the Disaster Recovery system at a separate location together with functional servers for items such as "***PowerInsight, MDBus, Multum***"[31] and the necessary interconnection and Storage Area Networking. This equipment, Mr. Massey stated, has been fully delivered and iCapital has paid AED40.7 million of the cost of this equipment. The remaining AED16 million that has not been paid was made part of the agreed Overdue Amount.[32]

- **Professional Services:** The sum of AED88.6 million of the CBA concerns professional services relating to the development, design, configuration, specification, integration and implementation of the Cerner system in the hospitals and clinics that form part of the Wareed Programme. AED18.4 million has been paid by iCapital, and AED47 million was made part of the agreed Overdue Amount. The Parties agreed that, as of 31st October 2012, the Claimant had already performed AED65.5 million of Professional Services. This corresponds with the fact that 12 of the 14 UAE hospitals had been fully implemented as of this date. Mr. Massey submitted that the remaining Professional Services contract amount of AED23.2 million was deferred pursuant to the SPA and scheduled for two separate invoices to be sent upon the completion of each of two milestones defined in Amendment No. 5 of the CBA. These are the only two payment amounts set forth in Amendment No. 5 of the CBA that do not have a defined date for invoicing. The first deferred amount of AED5.95 million, Mr. Massey pointed out, had been invoiced but had not been paid by iCapital. However, because of iCapital's financial issues and the resulting delayed builds at many of the clinics, AED17.2 million of that deferred amount has not been invoiced and further, was not being sought by the Claimant in this arbitration.

- **AMS - Application Management Services:** Mr. Massey explained that AMS provides a heightened level of software support and other services. It is intended as "Level 2" support[33], but that the Claimant had taken on more Level 1 work due to the lack of qualified iCapital staff and intermittent non-responsiveness of iCapital staff due to internal iCapital issues. It is an on-demand service product that is charged by time period, irrespective of the amount of service or support requested by the customer. The sum of AED47.8 million of the CBA was for AMS fees. At the time of execution of the SPA, none of these amounts had been paid. AED15.1 million had been integrated as part of the agreed Overdue Amount for AMS services provided up to 31st October 2012. Mr. Massey added that the Parties also agreed to schedule AED32.7 million of future AMS fees for invoicing on specific dates set forth in Amendment No. 5 of the CBA. As of 15th June 2014, the Claimant would have invoiced all AMS fees, but none had been paid. AMS services were to terminate and would no longer be available to iCapital as of 31st August 2014.

- **OMS - Operational Management Support:** Mr. Massey explained that this provided a heightened level of operational support and other services. The service provided

[30] Known as PROD, CERT, BUILD, MOCK and TRAIN domains.
[31] See Witness Statement of Mr. Massey, paragraph 15, second bullet point.
[32] Mr. Massey requested that it be noted that none of the Deferred or Future Payment amounts concern either the Licensed Software or the Equipment/Technology categories set forth in the CBA.
[33] Mr. Massey explained that this meant that iCapital would be responsible for initial support requests and resolution (Level 1) and the AMS services would be responsible for the Claimant-specific service requests and change requests.

proactive monitoring of the system state and function for all production and non-production systems, and further, provides fixes and upgrades to the systems to ensure optimum performance and reliability. Like the AMS above, the OMS was also an on-demand service that is charged by time period, irrespective of the amount of service or support requested by the customer. AED21.2 million of the CBA was for OMS fees. At the time of the SPA, none of those fees had been paid. AED10.7 million had been integrated as part of the agreed Overdue Amount, and the Parties had agreed to schedule AED10.5 million of future OMS fees for invoicing on specific dates set forth in Amendment No. 5 of the CBA. As of 15th June 2014, the Claimant would have invoiced all AED10.5 million for OMS, and none had been paid. OMS services would terminate and no longer be available to iCapital as of 31st July 2014.

- **Subscriptions:** Mr. Massey submitted that these were payments to third parties for product enhancements and updates, for critical system functions such as the procedural codes or knowledge based systems, such as clinical decision support in such areas as the Emergency Department. The Claimant had been making these third party payments on behalf of iCapital. AED23.4 million of the CBA concerns Subscriptions, and AED7.7 million was made part of the agreed Overdue Amount. AED15.7 million was scheduled for future invoicing on specific dates as set forth in Amendment No. 5 of the CBA, but none of these invoices have been paid. Mr. Massey pointed out that the Subscriptions service would terminate on 30th June 2014.

- **LSS - Licensed Software Support:** Mr. Massey set out that these were on-demand support services for fault resolution, including the Immediate Response Centre, and the provision of updates and fixes for the licensed application software by the Claimant. The sum of AED47.8 million of the CBA concerns LSS Support. AED17.6 million was made part of the agreed Overdue Amount. AED20.1 million was for support that was already provided but for which invoicing was deferred. As part of the SPA, the Parties agreed to invoice the already performed services on a schedule set forth in Amendment No. 5 of the CBA. AED10.1 million was for future support to be provided after the SPA and to be invoiced on an agreed schedule. LSS Support was to terminate on 27th September 2014.

7.4.9 Mr. Massey thus explained that the only amounts called for under the CBA, which were not presently due, were the Professional Services associated with the installation of the Cerner suite into the remaining hospital and clinics. The configuration of the software for a facility was dependent on a number of items, which are either not defined until the hardware is installed, such as network (IP) addresses, equipment type, or which can change over time, such as staff names and positions, laboratory stocks, and clinic names and times. As such, this configuration must be done as close to the conversion date as possible. The timing of a conversion is also dependent on other factors, such as the code upgrade, availability of staff for testing, training and support from iCapital and the MOH as well as iCapital obtaining certain hardware from another vendor. The Claimant has not yet provided all of those services, and as such, is not seeking those amounts.

7.4.10 Mr. Massey concluded his Witness Statement by pointing out that the Claimant had built its suite at one of the two remaining hospitals and at 6 of the 44 clinics that are outstanding in the Wareed Programme, but was not seeking any of the Professional Services costs associated with those builds because it agreed to defer invoicing of those amounts until the job was complete or the Terms of the CBA expired. The job cannot currently be completed due to iCapital's apparent financial constraints.

7.4.11 Table No. 7.4.11 below shows the figures that were reconciled and allocated to the value of the CBA of AED344,055,603 when the Parties agreed Amendment No. 5 divided into the various CBA services. In doing so, the Parties identified the following categories:

(1) Amounts that had already been paid to the Claimant as of 10th October 2012;
(2) Amounts that were part of the agreed Overdue Amount;
(3) Deferred Payment amounts; and
(4) Future Payments to be made.

Amounts in AED	Paid as of 31/10/2012 in AED	Payable with post-dated cheques 2012 – 14, in AED	Deferred Payments in AED	Future Receivables to be paid in AED	Total Invoice = Contract in AED
Cerner Licensed Software	53,840,587	4,403,803			58,244,390
Hosting Services		330,570			88,590,236
Professional Services	18,440177	47,000,000	23,150,059		56,748,548
Technology/ Equipment	40,739,086	16,009,482			21,150,168
OMS		10,680,653		10,469,515	47,816,056
AMS		15,083,674		32,732,382	23,387,158
Subscriptions		7,657,334		15,729,824	47,788,477
5-year Support		17,556,571	20,149,614	10,082,292	
	113,019,830	118,722,087[34]	43,299,673	69,014,013	344,055,603

Table 7.4.11 – Full Contract and Invoiced/Payments Reconciliation

7.5 **THE CLAIMANT'S WITNESS STATEMENT OF MR. PASCAL MAYGNAN**

7.5.1 Mr. Maygnan set out his position as the Claimant's finance manager, and confirmed that he had held that position since 2009. Mr. Maygnan stated that he has primary responsibility for the accounting and reporting of financial-related matters arising from the CBA, and amendments thereto, the most recent of which had been made in December 2012 as part of the SPA. Mr. Maygnan confirmed that he has knowledge of the following matters related to these proceedings:

- all payments that have been made by iCapital pursuant to the CBA;
- all post-dated cheques that were provided to the Claimant by iCapital pursuant to the SPA;
- all invoices that were issued to iCapital pursuant to the CBA and the SPA;

[34] There is a small discrepancy in the amount of this item as noted in foot note no. 38 below (sometimes referred to as AED118,722,088.00 and others as AED118,722,098.20, the latter being the value of the post-dated cheques, as set out in Table No. 7.5.8 below). This difference could have resulted from the rounding of the Dirham sums.

- all invoice and interest amounts that are presently due and owing to the Claimant from iCapital; and
- all amounts that the Claimant has expended in connection with its pursuit of this arbitration and of the collection of past due amounts from iCapital.

7.5.2 Mr. Maygnan provided some brief financial background details to the dispute between the Parties. Mr. Maygnan pointed out that the CBA had originally provided for specific date-based payments that were to be made by iCapital to the Claimant for the proprietary software, technology, and services that the Claimant was to deliver in accordance with the terms of the CBA. This defined payment flow, Mr. Maygnan stated, had been the subject of negotiations between iCapital and the Claimant prior to execution of the CBA, and the Claimant discounted the price of its software and services in exchange for the certainty of the agreed date-based payments from iCapital. Mr. Maygnan also stated that the Claimant's right to receive payment from iCapital for its performance had not been contractually conditioned on iCapital's receipt of payments from the MOH.

7.5.3 Mr. Maygnan stated that despite such an agreed payment structure, iCapital repeatedly claimed an inability to pay the Claimant because of the alleged failure of the MOH to make certain milestone payments to iCapital. Mr. Maygnan added that ignoring the unambiguous payment schedules set forth in the CBA, iCapital had breached its contractual payment commitment to the Claimant soon after execution of the CBA, and it had repeatedly failed to pay undisputed Claimant invoices. Between 2009 and 2012, Mr. Maygnan submitted that the Claimant had repeatedly demanded payment of delinquent invoices and was repeatedly assured by iCapital that payment would be forthcoming. iCapital committed to a series of different payment schedules in order to settle its outstanding invoices with the Claimant pursuant to the CBA, but iCapital failed to perform under any of those schedules.

7.5.4 Mr. Maygnan pointed out that by the end of 2009, just over one year following execution of the CBA, iCapital was already more than US$20 million in default to the Claimant and that as iCapital's repeated payment commitments went unfulfilled, the Claimant was forced in late December 2009 to exercise its contractual right to suspend its services as a result of iCapital's non-payment of undisputed invoices. In the weeks following this suspension of service, the Claimant received two payments from iCapital totalling approximately US$9.9 million. Mr. Maygnan submitted that whilst this amount was less than half of what was owed to the Claimant at that time, the Claimant agreed in good faith to resume its critical services under the Wareed Programme. Mr. Maygnan added that in late January 2010, the Parties agreed to a payment schedule for calendar year 2010 that would bring iCapital current on its outstanding debt to the Claimant, but iCapital failed to make any payments under that proposed payment schedule. As efforts to resolve the payment delinquencies proved unsuccessful, Mr. Maygnan stated that the Claimant was forced to exercise its contractual right to pursue arbitration in order to collect outstanding amounts due under the CBA, which it did in September 2012 and which was resolved by agreement of the Parties in December 2012 through the SPA.

7.5.5 Mr. Maygnan explained that the settlement of the initial arbitration was marked by the execution of the SPA and Amendment No. 5 of the CBA. The SPA, Mr. Maygnan averred, was intended to define and address amounts that were overdue to the Claimant, which iCapital explicitly acknowledged were due and owing for recognized and accepted performance by the Claimant up to 31st October 2012. Amendment No. 5 of the CBA had been intended to define and reschedule future payments for services that the Claimant was continuing to provide to iCapital and the Wareed Programme. Further, Amendment No. 5 of the CBA also defined an agreed Accrued Interest Amount that was due on the unpaid overdue amount as of the settlement date, which the Claimant was willing to waive if iCapital meet certain performance criteria.

7.5.6 Mr. Maygnan stated that iCapital had breached the defined payment promises that had been set forth in both the SPA and in Amendment No. 5 of the CBA. Mr. Maygnan went on to define the amounts that are due to the Claimant arising from that breach and divided them into specific categories, namely:

- Overdue Amounts;
- Accrued Interest on Overdue Amounts;
- Deferred and Future Payments;
- Post-Settlement Interest on Payment Breaches; and
- Fees and Costs related to this Arbitration.

Agreed Overdue Amounts

7.5.7 Mr. Maygnan repeated that the SPA comprised the Parties' agreement to specifically define an **Overdue Amount** of AED118,722,088.[35] Mr. Maygnan made reference to a number of specific extracts from the SPA, submitting that it explicitly confirmed that "***the Parties have determined, through direct, good faith, knowledgeable negotiation, and mutual settlement, that the principal amount owed to Cerner and past due through October 31, 2012 (the "Overdue Amount Settlement Date") under the CBA for past performance by Cerner of its obligations thereunder" is 118,722,088 AED***".[36] Further, the SPA also confirmed "***the Parties desire to finally and forever quantify the value of Cerner's performance – which performance is full and irrevocably acknowledged by iCapital – under the CBA, and to finally and forever define the principal about due to Cerner by iCapital for such Cerner performance up to and through the Overdue Amount Settlement Date as the Overdue Amount***".[37]

7.5.8 Mr. Maygnan explained that in order to ensure finality with respect to past performance and the value of that performance, the Parties included within the SPA an explicit release of claims against each other with respect to any acts or omissions that occurred prior to 31st October 2012, and in this respect had agreed to liquidate the amounts due and owing as of the Overdue Amount Settlement Date of 31st October 2012. As such, the value of all performance to that date was fixed by agreement and this liquidated amount replaced any of the then outstanding invoices. On the basis of this, iCapital issued a series of post-dated cheques to the Claimant to satisfy the Overdue Amount payment obligation. Schedule A to the SPA defined the amount of each post-dated cheque and the date upon which each cheque was to be presented by the Claimant to iCapital's bank for payment. The SPA confirmed that if any cheque was dishonoured when presented for payment, or otherwise failed to clear on the scheduled dates, such that funds do not post to the Claimant's account, that amount remains due and payable and the remainder of the Overdue Amount is accelerated and shall become immediately due and payable.[38]

[35] The current exchange rate is AED3.6725 to the US$1. That rate is fixed and not subject to daily fluctuation.
[36] See Witness Statement of Mr. Maygnan, page 5, paragraph 12.
[37] See Witness Statement of Mr. Maygnan, page 5, paragraph 12.
[38] The Tribunal notes the discrepancy between the amount of the Unpaid Overdue Amount mentioned in the Preamble to the SPA (AED118,722,088.00) and that mentioned in Schedule A of the SPA (AED118,722,098.20).

Moreover, Mr. Maygnan added that the SPA specifically confirmed that a default under the SPA would also constitute a cross-default under the CBA.[39]

PAYMENT SCHEDULE

	Date of PDC	Amount (in AED)	Issuing Bank
1.	December 29, 2012	9,175,000.00	Union National Bank
2.	January 31, 2013	14,825,000.00	Union National Bank
3.	April 25, 2013	34,750,490.37	Union National Bank
4.	September 5, 2013	19,216,708.47	Union National Bank
5.	December 5, 2013	9,421,565.96	Union National Bank
6.	February 20, 2014	15,666,667.20	Union National Bank
7.	May 20, 2014	15,666,666.20	Union National Bank
	TOTAL	**118,722,098.20**	

Future receivable payments (timing, schedule, payment terms, and other specific details) are set forth in the Amendment (Amendment No. 5 to the Cerner Business Agreement).

Table No. 7.5.8 – Details of the Post-dated cheques, as quoted from Mr. Pascal Maygnan's first Witness Statement, page 6

7.5.9 The dates for payment of the Overdue Amounts were set out within Schedule A to the SPA, which also stated that should iCapital default under the SPA, "***all legal fees and other costs and expenses related to collection incurred by Cerner in the pursuit and collection of amounts owed hereunder shall be the responsibility of iCapital[.]***"[40] Mr. Maygnan set out that the first post-dated cheque provided for the Overdue Amount was presented for payment as scheduled on 29th December 2012, and was cleared through which the Claimant received funds totalling AED9,175,000.00. The second cheque in the amount of AED14,825,000.00, was not presented for payment on 31st January 2013, on the basis that Respondent No. 2 requested that it not be presented as iCapital funds were not available. Ultimately, the amount of the second post-dated cheque was provided to the Claimant in the form of a letter of credit issued by iCapital. Whilst Mr. Maygnan acknowledged that the Claimant received payment of AED14,825,000.00, he stated that the failure of the second cheque to clear on 31st January 2013 was a breach of the SPA, triggering the acceleration clause contained in the SPA, and all Overdue Amounts became immediately due and payable. Subsequently, on 6th February 2013, the Claimant issued invoices to iCapital for the amounts equal to the remaining post-dated cheques.[41] Mr. Maygnan stated that the third post-dated cheque in the amount of AED34,750,490.00, was presented for payment on 25th April 2013, as scheduled in the SPA, and was not cleared. At the request of the UAE MOH, the Claimant provided a

The Tribunal further notes that Mr. Pascal Maygnan, in his Witness Statement, has used the former. However, the Tribunal is convinced that the accurate figure is AED118,722,098.20, which is the grand total of the values of the seven post-dated cheques that are set out in Table No. 7.5.8 above.

[39] See SPA, Section 5(b).

[40] See SPA, Section 5.

[41] Mr. Maygnan explained that owing to a clerical error, the invoice for the seventh PDC was not issued on February 6, 2013. That error was corrected by invoice sent on June 29, 2013. Mr. Maygnan noted that these invoices had been submitted to the Tribunal as the Claimant's Group Exhibit 7.

series of extensions up to 29th June 2013, for iCapital to make funds available or to otherwise pay this third instalment. However, iCapital failed to do so by that date.

7.5.10 Mr. Maygnan stated that beyond payment of amounts equivalent to the first two post-dated cheques, iCapital has only made two additional payments to the Claimant in partial satisfaction of the Overdue Amount. On 16th June 2013, iCapital made a payment by wire transfer of AED17,000,000.00 to the Claimant in partial satisfaction of the Overdue Amount. Additionally, on 26th December 2013, iCapital made a payment of AED3,680,000.00 to the Claimant. Mr. Maygnan acknowledged these payments and stated that these amounts had been credited against the amount of the third post-dated cheque, leaving AED14,070,490.00 due on that third payment amount. Mr. Maygnan stated that in summary, whilst a total of AED44,680,000.00 had been received from the Claimant, the full amount of payments no. 4 to 7 remain due and owing[42] in the sum of AED74,042,098.00.[43] Mr. Maygnan made reference to Appendix A of his Witness Statement which set out the outstanding amounts due from iCapital; the invoices issued for the amounts of the post-dated cheques; and the remaining amounts due on each of those invoices.

Accrued Interest on Overdue Amount

7.5.11 Pursuant to Section 3.3 of Amendment No. 5 of the CBA, Mr. Maygnan pointed out that iCapital had acknowledged that interest in accordance with Section 7.1(F) of the CBA had accrued for late payment owed to the Claimant by iCapital in the amount of AED28,684,772.00 as of 31st October 2012. It was a further element of the settlement between the Parties that such interest would be waived in the event that the first 3 post-dated cheques provided by iCapital cleared and the amounts posted to the Claimant's account.[44] Owing to the fact that "***the first three post-dated checks did not clear***", Mr. Maygnan submitted that the Accrued Interest Amount of AED28,684,772.00 became immediately due and payable.

Deferred Payments and Future Payments

7.5.12 Mr. Maygnan stated that Amendment No. 5 of the CBA had defined an invoice and payment schedule for performance that was largely, but not entirely, to occur after the settlement. These amounts, Mr. Maygnan pointed out, had been precisely described in Exhibits A and B to Amendment No. 5 of the CBA, and include four "***deferred***" payments and five "***future***" payments. Mr. Maygnan continued by pointing out that the four Deferred Payments relate to amounts that should have already been invoiced pursuant to the original CBA payment schedule but had not been invoiced at the time of the SPA. Two of these Deferred Payments (No. 1 and No. 3) concerned Professional Services, and it had been agreed between the Parties that these payments would be invoiced when certain implementation milestones had been reached. The other two Deferred Payments (No. 2 and No. 4) concerned Licensed Software Support for years 3 and 4 of the CBA that were originally due in September 2011 and September 2012 respectively, but were agreed to be invoiced on specific dates as newly scheduled in Amendment No. 5 of the CBA.

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[42] Mr. Maygnan stated that the Claimant had continued to present each of the post-dated cheques for payment on the dates scheduled in the SPA, but none of those cheques have cleared.
[43] The Tribunal notes that the exact amount is AED74,042,098.20.
[44] See Exhibit 2, sub-section 3; & Exhibit 3, sub-section 4.

7.5.13 In respect of the 5 Future Payments, Mr. Maygnan explained that these relate to future AMS, OMS, Subscriptions, and Licensed Software Support services that were called for under the CBA. Amendment No. 5 of the CBA defined the dates upon which those Future Payments would be invoiced and when they would be due.[45] Mr. Maygnan stated that the Claimant had continued to fully perform all of these services under the CBA since the execution of the SPA and Amendment 5 to the CBA, and as such, in accordance with Amendment No. 5 of the CBA, it had issued invoices for Future Payments Nos. 1 to 4, and for Deferred Payments Nos. 1 and 3. Further, together with the submission of his Witness Statement, Mr. Maygnan stated that the Claimant would issue invoices associated with Future Payment No. 5 and Deferred Payment No. 4, as scheduled in Amendment No. 5 of the CBA.

7.5.14 Mr. Maygnan made reference to Appendix A to his Witness Statement, which he submitted identified all outstanding invoices associated with the Deferred and Future Payments (as well as the invoices issued for the accelerated Overdue Amounts) and the outstanding invoices for the various services provided by the Claimant pursuant to the CBA. None of these invoices had been paid by iCapital, with the total amount of Deferred and Future Payment invoices issued pursuant to the agreement of the Parties in Amendment No. 5 of the CBA that is presently outstanding is AED77,577,088.00. Mr. Maygnan also stated that on 15th June 2014, the Claimant would issue invoices in respect of agreed Future Payment No. 5 and Deferred Payment No. 4 in the sum of AED17,538,201.00, which would become due and payable on 15th July 2014. In accordance with the terms of Amendment No. 5 of the CBA, Mr. Maygnan stated that the Claimant had not issued an invoice for Deferred Payment No. 3.

Additional Interest

7.5.15 Mr. Maygnan stated that in accordance with Section 7.1(F) of the CBA, the Claimant is entitled to interest on all amounts that are past due. Section 7 permits interest at the lesser rate of 1.5% per month or the maximum permissible rate. Mr. Maygnan added that pursuant to Missouri statute, the prejudgment interest rate for contract claims (when no rate is agreed between the parties) is 9%,[46] and whilst the Parties agreed to interest at the rate of 18% per annum for unpaid invoices, the Claimant was seeking interest at the annual rate of 9%. Mr. Maygnan attached a calculation of the interest currently due and owing on the outstanding iCapital receivables as of 15th June 2014 in the total amount of AED13,253,649.00.

Collection Fees and Costs

7.5.16 Also in accordance with Section 7.1(F) of the CBA and Section 5 of the SPA, iCapital was liable to the Claimant for costs and attorneys' fees relating to the collection of these unpaid invoices. Mr. Maygnan explained that the Claimant would present supplemental evidence in support of its claim for collection expenses at the time of the close of evidence in this matter.

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[45] Mr. Maygnan made reference to the Witness Statement of Mr. Massey, which he stated provided additional detail concerning the nature of these agreed services.

[46] See Missouri Revised Statute 408.020, which states "*Creditors shall be allowed to receive interest at the rate of nine percent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all other money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made.*"

Total Damages

7.5.17 Mr. Maygnan provided a summary of the Claimant's current claim for damages which was as follows:

- Unpaid Overdue Amount: **AED74,042,098**
- Current Unpaid Future and Deferred Payments: **AED77,577,088**
- Agreed Accrued Interest: **AED28,684,772**
- Additional Interest (as of 15th June 2014): **AED13,211,318**
- **Total Damages: AED193,515,276**
- (plus collection costs and additional invoices to be issued on 15th June 2014)

7.5.18 Mr. Maygnan stated that in addition to the above, the Claimant intended to add collection costs and invoices totalling AED17,538,201.00 all of which were to be issued on 15th June 2014.

7.6 THE CLAIMANT'S SUPPLEMENTAL WITNESS STATEMENT OF MR. PASCAL MAYGNAN

7.6.1 Mr. Maygnan submitted a Supplemental Witness Statement for the purpose of testifying to additional damages that Mr. Maygnan submitted the Claimant had suffered as a result of iCapital's breach. Mr. Maygnan confirmed also that between the date of his Witness Statement set out within section 7.5 above and the date of this, his Supplemental Witness Statement, no payments had been made by iCapital to the Claimant and the amounts to which he had previously testified remain due and owing.

Additional Invoice Amounts

7.6.2 Mr. Maygnan made reference to the schedule for the payment of Future and Deferred Payments and also to the invoice and payment schedule that had been defined within Amendment No. 5 of the CBA. Mr. Maygnan stated that at the time of his first Witness Statement, invoices relating to Future Payment No. 5 and Deferred Payment No. 4 had still to be issued by the Claimant to iCapital. This was ultimately done on 15th June 2014 and those invoices were included within Exhibit 14 of the Supplemental Witness Statement. Mr. Maygnan confirmed that the Claimant had performed all of the services associated with these invoices and is entitled to payment of them in the sum of AED17,538,201.00. iCapital failed to pay these invoices and accordingly, the Claimant sought additional damages in the amount of these unpaid invoices.

Additional Interest

7.6.3 Mr. Maygnan testified that in accordance with Section 7.1(F) of the CBA, the Claimant is entitled to interest on all amounts that are past due, and that as explained at paragraph 7.5.15 above, the Claimant was only seeking payment of interest at a rate of 9%. Mr. Maygnan clarified that in his previous Witness Statement he had calculated the interest that at the time was due and owing on outstanding iCapital receivables in the amount of AED13,325,033.00. This amount had since been recalculated and as of 1st October 2014 this amount totalled AED18,010,422.00.

Collection Fees and Costs

7.6.4 Also in accordance with Section 7.1(F) of the CBA and pursuant to Section 5 of the SPA, and as set out in his original Witness Statement, Mr. Maygnan stated that iCapital were liable to the Claimant for its costs and attorneys' fees relating to the collection of these unpaid invoices. Mr. Maygnan added that the Claimant had paid US$325,000.00 for its share of the US$650,000.00 advance on costs ordered by the ICC (and has presented a guarantee for an additional US$400,000.00 to cover iCapital's share of the original US$650,000.00 advance as well as a recently ordered US$75,000.00 increase in the advance). Further, the Claimant had paid its legal representatives five invoices to date relating to these proceedings, totalling US$211,838.00.

Total Additional Damages

7.6.5 Mr. Maygnan made reference to his original Witness Statement where he had identified a total claim for damages in the amount of AED193,515,276.00, adding that since that Statement, the Claimant had suffered additional damages in the amount of AED22,223,590.00 relating to additional unpaid invoices[47], together with additional interest[48] and fees and costs[49] associated with these arbitral proceedings.

[47] AED17,538,201.00.
[48] AED4,685,389.00.
[49] US$536,838.00.

8. THE NOVEMBER 2014 HEARING

8.1 Pursuant to Order No. 2.1 of Procedural Order No. 3, the Hearing in this Arbitration case was held on 17th and 18th November 2014 at the premises of the ICC Hearing Centre, 112 Avenue Kléber, 75016 Paris, France and commenced at 14:00.

8.2 Following an introduction by the President of the Arbitral Tribunal, all those present were introduced and their position and affiliation indicated. Those present at the commencement of the Hearing were as follows:

(a) **The Arbitral Tribunal**

Dr. Nael G. Bunni,	President of the Arbitral Tribunal;
Mr. Andrew de Lotbinière McDougall,	Co-arbitrator; &
Dr. Omar Isam Al-Taher	Co-arbitrator.

(b) **On behalf of the Claimant:**	**Position & Affiliation**
1. Mr. Matthew G. Allison,	Baker & McKenzie LLP;
2. Mr. Kyle R. Olson,	Baker & McKenzie LLP;
3. Ms. Melanie Schueller,	Baker & McKenzie LLP;
4. Mr. Anis Zerriny,	General Counsel, Cerner; &
5. Mr. Steve Gallagher,	General Counsel, Cerner.

(c) **On behalf of Respondent No. 1:** **Position & Affiliation**
There was no appearance by or on behalf of Respondent No. 1

(d) **On behalf of Respondent No. 2:** **Position & Affiliation**
There was no appearance by or on behalf of Respondent No. 2

8.3 The Hearing commenced as scheduled on 17th November 2014 and continued until 14:40 in the afternoon of the following day, 18th November 2014. Although the 19th of November 2014 had also been reserved for the Hearing, owing to the fact that neither Respondent No. 1 nor Respondent No. 2 attended the Hearing, this day was not required and was ultimately vacated. A verbatim transcript of each day of the Hearing was taken by Ms. Yvonne Vanvi of 7 rue Georges Baudin, 92500 Rueil-Malmaison, France. This transcript was later received from Ms. Vanvi on 21st November 2014 and was forwarded to the Parties and to the Secretariat on 21st November 2014.

8.4 Before making introductions, the President of the Arbitral Tribunal noted that there was no attendance by either Respondent No. 1 or Respondent No. 2, despite the fact that both Parties had been duly notified of the dates for the Hearing. Consequently, the Tribunal declared that the Hearing in this case would proceed pursuant to Article 26(2) of the Rules. The President then proceeded to make brief introductions and invited the Claimant to introduce those present at the Hearing on its behalf. Having done so, the Tribunal indicated that it intended to follow the agenda that had been set out by the Claimant in its letter of 24th October 2014, discussed at paragraph 4.28 above. The Tribunal also dealt with the Claimant's application of 13th November 2014, discussed at paragraph 2.5.17 above in respect of the introduction of additional documents to the Tribunal. Based on the fact that neither Respondent No. 1 nor No. 2 had raised any objection to such documents being introduced, despite being requested by the Tribunal to do so, if they wished, the Tribunal, having deliberated, allowed the Claimant to introduce those additional documents. Mr. Allison, on behalf of the Claimant, began his opening statement by providing a brief outline and summary of the Claimant's case and of the Contract between the Parties. Following on from this, the Tribunal questioned Mr. Allison extensively on the question of the jurisdiction of the Tribunal and requested that the Claimant's Closing Submissions provide the legal basis upon which the Claimant asserts that the Tribunal has jurisdiction to deal with this dispute.

8.5 The Claimant then first introduced its witnesses of fact. Mr. James Massey was the Claimant's first witness, called following the Claimant's Opening Statement. Mr. Massey gave an affirmation and was examined in Chief by Mr. Allison, acting on behalf of the Claimant. Mr. Massey confirmed that the testimony provided within his Witness Statement dated 16th June 2014 discussed within section 7.4 above was true and accurate and briefly outlined the work involved in the contract between the Parties together with the Claimant's performance of that work. Mr. Massey also gave evidence of his involvement in the negotiations with the Respondent in respect of the services that had been provided by the Claimant in respect of which payment was due from the Respondents. Specifically, Mr. Massey gave evidence regarding the history behind the SPA and Amendment No. 5 of the CBA dated 29th December 2012 and the facts that emerged following these two agreements, namely the alleged failure by the Respondents to abide by the terms contained therein and the Claimant's continued performance despite this.

8.6 Mr. Massey further dealt with the terms of each of those agreements, together with the services that were to be provided thereunder. Mr. Massey stated that pursuant to the terms of the CBA, the Claimant had the right to suspend its services in the event that the Respondent failed to perform and that in that vein the CBA had been terminated and a written Notice of Termination dated 9th September 2014 had been furnished to Respondent No. 1[50]. Mr. Massey stated that, to his knowledge, the MOH had reimbursed Respondent No. 1 for the work that had been carried out by the Claimant pursuant to the terms of the CBA, but that this payment had not been passed on to the Claimant. Mr. Massey however accepted that the Claimant did not have "***formal visibility into the iCapital-MOH relationship***"[51] and the MOH had not furnished information to the Claimant as to the money it had paid to Respondent No. 1 in respect of the Wareed Programme. Mr. Massey was excused at the conclusion of Day 1 of the Hearing.

8.7 The President of the Tribunal welcomed everyone to the second day of the Hearing, following which Mr. Gadamsi, the Claimant's second witness, was called to provide his evidence. Mr. Gadamsi swore upon the Koran and confirmed that the testimony contained within his Witness Statement, discussed within section 7.3 above, was true and accurate. Having outlined his professional background and the position that he held with the Claimant at the relevant time, Mr. Gadamsi provided his testimony around the interaction of Respondent No. 1 and Respondent No. 2.

8.8 The Tribunal explained at the outset that owing to the fact that this was an important issue that related specifically to the question of the Tribunal's jurisdiction, its intention was to ask questions of the witness itself as they arose so that the Tribunal could be satisfied that it fully understood the relationship between both Respondents that existed at the time of the CBA, the SPA and Amendment No. 5 of the CBA.

[50] See Exhibit C-32.
[51] See Transcript, Day One, page 87, lines 3-5.

8.9 Mr. Gadamsi gave evidence surrounding the signature of the SPA, including Respondent No. 1's acknowledgment within that document that it had failed in its obligation to make payments to the Claimant under the terms of the CBA. Mr. Gadamsi explained that the Claimant had continued to perform its obligations under the terms of the CBA owing to the fact that if it did not, it would suffer damage to its reputation and the health and safety of the patients that were part of the Wareed Programme. Further, Mr. Gadamsi explained the MOH, as the ultimate end-user of the Wareed Programme, was also requesting the Claimant to continue with its obligations. The Tribunal questioned Mr. Gadamsi on what evidence he could put forward to suggest that Respondent No. 2 would honour the outstanding payments to the Claimant. Mr. Gadamsi's response was that he had observed assurances that had been given orally by Respondent No. 2 to Mr. Greg White who was the Claimant's representative in charge of its Middle East Operations, but nothing could be offered to the Tribunal in writing confirming this.

8.10 Mr. Gadamsi also testified regarding the facts surrounding the restructuring of iCapital from a single proprietorship entity to a LLC. Mr. Gadamsi was unable to recollect if there were any e-mails confirming the Claimant's objection to the restructuring, as such a restructure was not allowed under the terms of the CBA. The Tribunal questioned Mr. Gadamsi further on this, to which he testified that he distinctly remembered telling Mr. Amro Al-Deeb of Respondent No. 1 that the re-structuring was not something that was allowed pursuant to the terms of the CBA.[52] Mr. Gadamsi also provided evidence in respect of ICC arbitration case number 18941/VRO/AGF (which preceded the SPA) and referred to in paragraph 3.1.8 above, confirming that both Respondents No. 1 and No. 2 had been represented by Messrs. Al Tamimi & Company in that arbitration and that there had been no objection to the jurisdiction of the ICC in that case. Mr. Gadamsi then went on to explain the reason why the Parties in the first arbitration were not the same as those named within these arbitral proceedings. The explanation given was that Respondent No. 1 had reformed itself from a sole proprietorship to a LLC and in respect of Respondent No. 2, even though he was not named within the terms of the SPA, he was nonetheless the sole owner of iCapital S/E when it was a sole proprietorship and proceeded to own 99% of the shares of Respondent No. 1. Further, pursuant to paragraph 7 of the SPA, whilst all claims against iCapital S/E, its directors, officers and employees had been waived, no claim against its owner, specifically Respondent No. 2 had been waived. Accordingly, Respondent No. 2 was still bound to the Claimant. Mr. Gadamsi testified that this was clear to all parties involved at the time the SPA was entered into although accepted that there was nothing in writing to confirm this understanding.

8.11 Mr. Gadamsi was questioned by the Tribunal on why the Claimant would enter into a further agreement, namely the SPA, but not name Respondent No. 2 as a party to that agreement. Mr. Gadamsi explained that a significant motivating factor was the fact that the Claimant had been given three post-dated cheques by Respondent No. 1 in satisfaction of the outstanding amount due to the Claimant prior to the execution of the CBA, and that under UAE law, "***a post-dated cheque that bounces is a criminal offence both against the person that's executing it and the owners of the company to which the signatory is on. So that would have brought into play Mr. Al-Dahari, Mr. Al-Dahari's son and Amro Al-Deeb at the time that those cheques were signed.***"[53] Mr. Gadamsi testified that

[52] See Transcript, Day Two, page 155, lines 17 to 19.
[53] See Transcript, Day Two, page 168, lines 19 to 25.

in addition, it was comforted by the corporate guarantees that had been issued by Belbadi Enterprises LLC, the parent affiliate, in respect of which Respondent No. 2 signed and thereby authorised. Further, Mr. Gadamsi explained that Mr. Amro Al-Deeb had signed the SPA on behalf of Respondent No. 1 and that he had the requisite authority to sign the SPA and Amendment No. 5 of the CBA on Respondent No. 1's's behalf.

8.12 Mr. Pascal Maygnan was the Claimant's third Witness of Fact. Mr. Maygnan gave an affirmation and was examined in Chief by Mr. Allison, acting on behalf of the Claimant. Mr. Maygnan confirmed that the testimony, provided within his Witness Statement dated 16th June 2014, discussed within section 7.5 above together with his Supplemental Witness Statement dated 28th September 2014 discussed within section 7.6 above were true and accurate and briefly outlined his position and role as Senior Financial Manager for the Middle East with the Claimant. Mr. Maygnan provided details surrounding the payments that had been made and the defaults that had arisen pursuant to the CBA. Further, Mr. Maygnan provided details surrounding alternative payment plans that were discussed between the Parties between 2010 and 2012, none of which were ever formalised. Mr. Maygnan confirmed there were no pay-when-paid clauses provided for within the Contract and as such, the Claimant was not dependent on Respondent No. 1 being paid by the MOH before the Claimant would be entitled to payment. Mr. Maygnan also gave evidence surrounding the meetings that took place between the Parties following the initiation of the first arbitration that led to the execution of the SPA and Amendment No. 5 of the CBA.

8.13 In respect of the post-dated cheques that had been provided to the Claimant pursuant to the terms of the SPA, Mr. Maygnan confirmed that the first post-dated cheque had cleared and further, informed the Tribunal that Mr. Al-Dahari, Respondent No. 2, acting on behalf of both of the Respondents, had personally requested the Claimant not to present the second cheque for payment to the bank. Mr. Maygnan added that Respondent No. 2 had assured the Claimant that a Letter of Credit would be issued to it instead. This Letter of Credit, in the name of Respondent No. 1, was accepted by the Claimant and was ultimately cashed on 19th February 2013. Mr. Maygnan was questioned on whether or not "***the failure of the post-dated cheque to clear as of January 31st, 2013 was a breach of the terms of the SPA?***", to which he responded that it was. On this basis, Mr. Maygnan further testified that the Claimant issued all invoices for those post-dated cheques to Respondent No. 1 in accordance with the terms of the SPA and that whilst the Claimant had attempted to cash the remaining four post-dated cheques, none of those cheques cleared. Mr. Maygnan then provided evidence to the Tribunal on the specific amounts that are being claimed in this case and how those amounts were accrued.

8.14 Following the conclusion of Mr. Maygnan's testimony, the Claimant's final witness, the Claimant presented its Motion for Adverse Evidentiary Inferences that had been filed with the Tribunal on 6th June 2014.

8.15 The Tribunal proceeded to discuss a number of minor procedural matters with the Claimant, specifically with respect to the Post-Hearing Submissions and the closure of the proceedings in accordance with Article 27 of the Rules.

8.16 Further, the Tribunal requested the Claimant to confirm if it had any reason to question the way in which any part of the proceedings had been conducted. The Claimant confirmed that it was happy with the conduct of the proceedings and accordingly, at 14:42

on Tuesday 18th November 2014, the President of the Arbitral Tribunal declared the Hearing closed.

9. THE PARTIES' POST-HEARING SUBMISSIONS

9.1 THE CLAIMANT'S POST-HEARING SUBMISSIONS

9.1.1 As stated at paragraph 8.17.3 above, on 9th December 2014, the Claimant filed its Post-Hearing Submissions in this Arbitration.

9.1.2 The Claimant's Post-Hearing Submissions are discussed in the following paragraphs under the following four headings:

- Preamble;
- Witness Evidence;
- Jurisdiction; and
- Costs.

Preamble

9.1.3 At the outset of its Post-Hearing Submissions, the Claimant once again provided brief background details to the dispute between the Parties named herein, arguing that there could be no question of the liability of Respondent No. 1 in this case as a contracting party to the SPA and the CBA. The Claimant added that Respondent No. 2 was similarly liable for some, if not all, of Respondent No. 1's debts to the Claimant as the former sole proprietor of iCapital S/E and as the "***alter ego of iCapital***".

9.1.4 The Claimant stated that its intention in making its Post-Hearing Submissions was to highlight the factual and legal framework upon which it was entitled to a Final Award in its favour. Specifically, the Claimant argued that, in accordance with the terms of the SPA and Amendment No. 5 of the CBA, the Claimant's performance of its contractual obligations up to 31st October 2012 was confirmed and that in this respect the value of that performance had been defined as the "***Overdue Amount***". Both Respondent No. 1 and Respondent No. 2 had agreed to pay the said amount and provided a number of post-dated cheques in this respect. Further, both Respondent No. 1 and Respondent No. 2 had affirmed the future payment schedule by Respondent No. 1 for the Claimant's continued performance.

9.1.5 The Claimant submitted that it had agreed to enter into the SPA and Amendment No. 5 of the CBA on the basis of continued representations that had been made to it from the two Respondents herein that they would be in a position to perform their obligations thereunder, but those representations proved false. In this regard, the Claimant insisted that Respondent No. 2 personally, and through his agents, Mr. Amro Al-Deeb and Mr. Ziad Elhendi, was fully in control of the negotiations on behalf of both Respondents and that no management decision by Respondent No. 1 could be made without the approval of Respondent No. 2. In this regard, the Claimant exhibited a number of e-mails to prove "***the intimate involvement of Al-Dahari in all aspects of iCapital's involvement in the Wareed Program***".[54] These emails were as follows:

(i) An email dated 31st December 2009 from the Claimant's executive and original CBA signatory, Rich Berner, to John Peterzalek, amongst others[55];

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[54] See Claimant's Post-Hearing Submissions, page 3.
[55] Exhibit C-36 to the Claimant's Post-Hearing Submission.

(ii) An email dated 11th March 2013 from Greg White to John Peterzalek and copied to Pascal Maygnan, Feras Gadamsi, amongst others;[56] and

(iii) An email exchange between John Peterzalek and Mike Vesser of the Claimant, dated 11th July 2013[57].

9.1.6 The Claimant alleged that Respondent No. 1 was severely under-capitalised at the time of its purported formation and that Respondent No. 2 had unilaterally restructured Respondent No. 1 in an effort to insulate himself from his continuing liability. The Claimant insisted however that, regardless of this restructure, Respondent No. 2 was not absolved from his liability, since as the owner and proprietor of Respondent No. 1, the release provisions of the SPA were not applicable to him and he remained fully liable for the Overdue Amount defined in that agreement. In this regard, the Claimant made reference to the testimony that had been given by Mr. Gadamsi at the Hearing that the SPA was not intended to release Respondent No. 2 from his obligations and that this had been specifically discussed and understood between the Parties during the negotiations that led to the SPA and Amendment No. 5 of the CBA.

Witness Evidence

9.1.7 The Claimant proceeded to highlight some of the "***key ... testimony***" that had been provided by its Witnesses at the Hearing. In respect of Mr. Massey's evidence, the Claimant submitted that as its lead results executive for the Wareed Programme, Mr. Massey had provided sufficient evidence to the Tribunal relating to the Claimant's performance and Respondent No. 1's failure to perform, as well as the reasons why the Claimant had continued to perform its obligations despite the alleged breach by the Respondents.

9.1.8 As the Claimant's Corporate Counsel for the Middle East, the Claimant's next witness, Mr. Gadamsi gave evidence surrounding the negotiations of the SPA and Amendment No. 5 of the CBA, namely the following:

(a) the full and irrevocable acknowledgement that the Claimant had fully performed its obligations under the CBA up to 31st October 2012;

(b) the agreed Overdue Amount for the Claimant's aforementioned performance up to 31st October 2012 and the accrued interest on that Overdue Amount together with the schedule of Deferred and Future Amounts that were acknowledged as being owed by Respondent No. 1;

(c) the Acceleration Clause within Section 4 of the SPA and the triggers that would render that clause operative; and

(d) the agreement to arbitrate contained within both the SPA and Amendment No. 5 of the CBA.

9.1.9 Specifically in respect of item (d) above, the Claimant also made reference to Mr. Gadamsi's evidence in respect of the Tribunal's jurisdiction over Respondent No. 2 and the contention that Respondent No. 2 had effectively dominated and controlled not only the finances but also the operations of Respondent No. 1 and that as such, there was no substantial difference between the interests of either Respondent. In this regard, the Claimant submitted what it deemed to be "***further evidence of Al-Dahari's alter ego***

[56] Exhibit C-37 to the Claimant's Post-Hearing Submission.
[57] Exhibit C-38 to the Claimant's Post-Hearing Submission

control over iCapital',[58] and exhibited a number of e-mails, as set out within paragraph 9.1.5 above, which it submitted, emphasised the level of involvement Respondent No. 2 had in all aspects of the Wareed Programme.[59]

9.1.10 The Claimant also made reference within its Post-Hearing Submissions to the evidence that had been provided to the Tribunal by Mr. Maygnan, the Claimant's Senior Financial Manager in the Middle East. Mr. Maygnan's evidence related mainly to the financial aspect of the Claimant's claim and the total damages that the Claimant alleged it had suffered as a result of the Respondents' breaches of both the CBA and the SPA. As of 1st October 2014, the Claimant calculated this figure to be AED215,800,000.00, which said sum did not include the Claimant's fees and costs. Furthermore, the Claimant reminded the Tribunal of Mr. Maygnan's testimony regarding the post-dated cheques that had been issued to the Claimant pursuant to Schedule A of the SPA and "***confirmed that when the second post-dated check [sic] failed to clear … 'all payments' became 'due immediately'***".[60] The Claimant pointed out that, as Mr. Gadamsi had done, Mr. Maygnan had also confirmed that Respondent No. 2 had exercised direct control over Respondent No. 1's finances, specifically that Respondent No. 2 used Mr. Elhendi and Mr. Al-Deeb on a daily basis to negotiate the terms of the SPA.

Jurisdiction

9.1.11 However, the bulk of the Claimant's Post-Hearing Submissions related to its submission that the Tribunal had the requisite jurisdiction over both Respondent No. 1 and Respondent No. 2. In respect of Respondent No. 1, the Claimant argued that it had successfully proved that both the SPA and the CBA contain an express arbitration clause calling for exclusive ICC jurisdiction and that each clause broadly encompasses all disputes arising from both the SPA and the CBA. The Claimant added that pursuant to the Rules, the Tribunal had the power to determine its own jurisdiction. In doing so, the Claimant argued that it was clear not only in accordance with the law of the contract[61], the law of the arbitration[62] or indeed the terms of the New York Convention[63] (to which both the US and the UAE were signatories), the Tribunal had the jurisdiction to hear and determine this dispute between the Parties. The Claimant reminded the Tribunal that no evidence to the contrary had been presented by either Respondent in this case and dismissed the "***vague and unsupported jurisdiction contentions***" that Respondent No. 1 had attempted to make before choosing not to participate in the current proceedings.

9.1.12 In respect of the Tribunal's jurisdiction over Respondent No. 2 in this case, the Claimant argued that the Tribunal "***can and should exercise jurisdiction***"[64] over Respondent No. 2 on the following two distinct bases:

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[58] See Claimant's Post-Hearing Submissions, page 10.
[59] See Claimant's Post-Hearing Submissions, Exhibits C-36, C-37 and C-38.
[60] See Claimant's Post-Hearing Submissions, page 12.
[61] US Law, where the Claimant relied on the following decisions: *State ex. rel. MCS Building Co. v. KKM Medical*, 896 S.W. 2d 51, 53 (Mo. App. 1995); *McCracken v. Green Tree Servicing, LLC*, 279 S.W. 3d 226, 227-28 (Mo. App. 2009); and *Estate of Athon v. Conseco Fin Servicing Corp.*, 88 S.W. 3d 26, 30 (Mo. App. 2002).
[62] French Law, where the Claimant relied on the following: Articles 1442 to 1527 of the French Code of Civil Procedure ("CCP"); "*Arbitration under Private International Law: The Doctrines of Separability and Competence de la Competence*," 17 Fordham Int'l L.J. 599, 637-38 (1994); *Societe Impex v. Societe P.A.Z.*, Judgment of May 18, 1971, Cass. civ. 1re, 1971 Bull. Civ. I, No. 161, at 134; Societe Gosset v. Societe Carapelli, Judgment of May 7, 1963, Cass. civ. 1re, 1963 Bull. Civ. I, No. 246, at 208 (Fr.); Societe Internationale du Siege v. Societe Bocui Judgment of Nov. 26, 1981, Cour d'appel de Paris, 1re Chambre suppl., [1982] Rev. Arb. 439; and *La Société Doga v HTC Sweden AB*, Supreme Court N°09-67013 (8 July 2010).
[63] Article II, New York Convention and the Recognition and Enforcement of Foreign Arbitral Awards.

(a) Respondent No. 2 was 100% the owner and sole proprietor[65] of iCapital, and as such was personally liable for all of its obligations, including the agreement to arbitrate any disputes that may arise up to the execution of the SPA, at which time the Claimant agreed to recognise the restructuring of iCapital S/E as a limited liability company. Therefore, the agreed Overdue Amount that was acknowledged as being due and owing to the Claimant for performance of its obligations prior to the execution of the SPA, together with the agreed accrued interest on that amount, is due from both Respondents. The reason proffered for this was that Respondent No. 2 was not released from obligations under the CBA as he was the "***owner***"[66] of iCapital; and

(b) The Claimant insisted that at all times Respondent No. 2 has been the alter ego of iCapital such that jurisdiction over, and liability of, iCapital, is indistinguishable from jurisdiction over, and liability of, Respondent No. 2. Further, the Claimant asserted that the unrebutted evidence had established that iCapital had "***no separate mind, will, or existence of its own***"[67]. Respondent No. 2, the Claimant argued, should not be entitled to exercise control and domination over Respondent No. 1, and at the same time, claim he is not personally liable for its debts.

9.1.13 The Claimant requested the Tribunal to allow additional evidentiary inferences in light of what it asserted to be "***the Respondents' refusal to respond to document requests authorized by this Tribunal.***"[68] Those responses, the Claimant argued, would have revealed the lack of any real corporate formalities in the operation of iCapital, and, further, would have supported an alter ego finding against Respondent No. 2. Accordingly, the Claimant submitted that the Tribunal should make such inferences and hold the Respondents jointly and severally liable for the total amount due to the Claimant in this case.

Costs

9.1.14 In respect of the damages suffered, the Claimant stated that, whilst the principal debt under both the CBA and the SPA had remained the same since 31st October 2014, additional interest had accrued on the unpaid invoices and further, additional fees and costs associated with the within proceedings had been incurred. Therefore, the updated amount being claimed by the Claimant in this case, up to the date of the filing of its Post-Hearing Submissions was as follows:

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[64] See Claimant's Post-Hearing Submissions, page 19.

[65] The Claimant relied on the decision of *Minn. Laborers Health & Welfare Fund v. Scanlan*, 360 F.3d 925, 928 (8th Cir. 2004), which it submitted established that a sole proprietor is *personally liable* for *all debts* of the sole proprietorship and that this applied even where that sole proprietorship converts to a limited liability company, as per the decision in *Baker v. Dorfman*, 2000 U.S. Dist. LEXIS 10142 (S.D. N.Y. July 21, 2000), *aff'd* 232 F.3d 121 (2d. Cir. 2000). The Claimant also relied upon a decision of the Dubai Court of Cassation wherein it was stated that "***A private commercial establishment or a sole proprietorship has no legal personality independent of the person of its owner or the holder of the trade license relating to it. Such establishment is just one of the elements of his own financial liability, and the owner of it or the owner of the relevant trade license will bear the obligations and debts of it. A judgment passed against it will be enforceable as against him to the extent that the judgment shows that the establishment has a liability.***" (Dubai Court of Cassation, 20/2008, 2 March 2008).

[66] As opposed to "***directors, officers and employees***", which persons were specifically identified and released of any obligations in accordance with the terms of the SPA, see paragraph 9.2.34 below.

[67] See Claimant's Post-Hearing Submission, page 22 and their reliance on the decision in *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W. 2d 32, 40 (Mo. 1999).

[68] See Claimant's Post-Hearing Submissions, page 24.

• Unpaid Overdue Amount	AED74,042,098
• Unpaid Deferred and Future Payments	AED95,115,289
• Unpaid Accrued Overdue Interest	AED28,684,772
• Unpaid Post-Settlement Interest	AED20,928,387
• Collection Fees & Costs	AED4,625,628
TOTAL	**AED223,396,174**

Reliefs sought by the Claimant

9.1.15 Accordingly, the Claimant requested the Tribunal to award it "***direct damages arising from iCapital's undeniable breaches of contract***" and further, make the following specific findings in its Final Award:

"

- ***The SPA and CBA, including all amendments and schedules thereto, are binding contracts between Cerner and iCapital and are governed by Missouri law.***
- ***The arbitration clauses contained in both the SPA and the CBA are valid and binding between Cerner and iCapital.***
- ***Those clauses require arbitration of any disputes between Cerner and iCapital, and all of the contract claims asserted by Cerner plainly fall within the broad scope of those arbitration clauses.***
- ***This Tribunal has jurisdiction over iCapital.***
- ***This Tribunal has jurisdiction over Al-Dahari.***
- ***Both Respondents have proper notice of this proceeding, consistent with the Terms of Reference and basic notions of fairness and due process.***
- ***Despite such notice, Respondents have each affirmatively refused to participate in this proceeding, including refusal to appear at the Evidentiary Hearing. Respondents have refused to participate despite being served with all of the operative documents in this dispute and being given ample opportunity to respond at consistent points throughout this proceeding, up to and through the conclusion of the Evidentiary Hearing.***
- ***Cerner fully performed its obligations under the CBA through October 31, 2012. iCapital fully and irrevocably acknowledged that Cerner performance and irrevocably agreed to pay to Cerner for that performance in the amount AED 118,722,088. The SPA defines this amount as the "Overdue Amount."***
- ***iCapital has breached its promise to pay the Overdue Amount. iCapital has paid AED 44,680,000 of the Overdue Amount, but is liable to Cerner in the amount of AED 74,042,098, plus interest.***
- ***iCapital has also breached its promise to pay the agreed "Accrued Interest Amount" that became due pursuant to SPA and the CBA, and therefore iCapital is also liable to Cerner in the amount of AED 28,684,772.***
- ***As iCapital's former sole proprietor, Al-Dahari for the debts of iCapital prior to its restricting. (sic)***
- ***Al-Dahari is liable for the entirety of unpaid Overdue Amount and Accrued Interest Amount, or 102,726,870.***

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- *Amendment No. 5 to the CBA reschedules certain additional payments from iCapital that were due or were to become due to Cerner, and it defines those payments as "Deferred Payments" and "Future Payments."*
- *Cerner has continued to perform under the terms of the CBA and is entitled to full payment of the invoices that it has issued to iCapital in compliance with the schedule set forth in Amendment No. 5.*
- *iCapital has breached its promise to pay those invoices and has not made any payments to Cerner in connection with those invoices. Therefore, iCapital is also liable to Cerner in the amount of AED 95,115,289.*
- *Cerner is entitled to simple interest at 9% for unpaid amounts. As of December 9, 2014, iCapital is liable to Cerner for interest in the amount of AED 20,928,387.*
- *Pursuant to both section 5 of the SPA and pursuant to section 7.1(F) of the CBA, Cerner is entitled to fees and costs associated with its effort to recover for iCapital breaches. As of December 7, 2014, iCapital is liable to Cerner in the additional amount of 4,625,628 AED for those fees and costs.*
- *All of the payment breaches alleged by Cerner constitute claims for breach of the CBA because any breach of the SPA is also a cross-default under the CBA.*
- *Amro Al-Deeb had both capacity and authority to execute the SPA and the CBA on behalf of iCapital and to execute the arbitration clauses contained in each of those agreements.*
- *The arbitration provision of the CBA Amendment No. 5 is expressly incorporated into the SPA such that the arbitration provisions in both contracts are identical.*
- *iCapital was severely undercapitalized at the time of its formation and at the time it executed the SPA and CBA Amendment No. 5 with Cerner.*
- *Al-Dahari has served as the sole equity investor of iCapital such that iCapital would remain severely undercapitalized, if not insolvent, but for Al-Dahari.*
- *Al-Dahari has routinely commingled his own funds with those of iCapital, both before and after iCapital Sole Establishment (S/E) ("iCapital SE") was purportedly restructured to iCapital LLC.*
- *iCapital's finances, both before and after iCapital SE was restructured to iCapital LLC, have been and are overwhelmingly controlled by Al-Dahari.*
- *Al-Dahari has used employees or subordinates from other entities within his family of companies to manage the affairs of iCapital.*
- *iCapital has not kept its own financial records in the ordinary course of business.*
- *iCapital has not issued financial statements in the ordinary course of business, nor has iCapital or Al-Dahari provided audited financial statements despite Cerner's express requests for same and as required under the CBA.*
- *Al-Dahari purportedly restructured iCapital from a sole establishment to an LLC once iCapital was named in the first arbitration that Cerner filed in September 2012, with the only rational inference being that Al-Dahari did so as a strategic effort to insulate himself from personal liability to Cerner. The Tribunal makes that inference here.*
- *There is no material difference between iCapital S/E and iCapital LLC, as evidenced by the fact that Al-Dahari purportedly changed from 100% owner of the entity to 99% owner of the entity – while transferring the remaining 1% ownership to his son.*
- *iCapital has not held typical corporate meetings, including shareholder or board of director meetings, and has not passed resolutions or consents in lieu of corporate meetings.*

- *iCapital took no minutes from any shareholder or board of director meetings since no such meetings occurred.*
- *Any and all of iCapital's business decisions and interactions with respect to the Wareed Project were controlled and dictated by Al-Dahari.*
- *iCapital, at all relevant times to this dispute, has been an alter ego of Al-Dahari, who has owned, managed and controlled iCapital such that iCapital has had no separate mind, will or existence of its own.*
- *iCapital and Al-Dahari share a unity of interest and have disregarded any corporate form in their day-to-day operations and management and in their promises with respect to performance of the CBA and SPA.*
- *Al-Dahari is jointly and severally liable for all of iCapital's debts and obligations to Cerner in relation to the Wareed Program, including the obligation to arbitrate any and all disputes arising from the CBA and SPA.*
- *iCapital and Al-Dahari are jointly and severally liable to Cerner in the amount of 223,396,174 AED."*

9.2 THE CLAIMANT'S SUPPLMENTAL POST-HEARING SUBMISSIONS

9.2.1 As set out at paragraph 8.17.3 above, on 12th December 2014 the Tribunal requested the Claimant to make submissions in support of its request for an award of Fees and Costs it alleges it incurred as a result of this arbitration. This element of the Claimant's Claim had been summarised in a footnote in the Post-Hearing Submissions (footnote 14), but the Tribunal requested full details of these fees & costs claimed by the Claimant. The Claimant was given until 19th December 2014 to submit these details.

9.2.2 On 19th December 2014, the Claimant submitted a Supplemental Post-Hearing Submission concerning the fees and costs it claimed in the sum of AED4,625,628.00, i.e. the sum indicated in paragraph 9.1.14.

9.2.3 The Claimant submitted that there were two categories of costs for which it requested the Tribunal to make an award in its favour. Firstly, it sought costs imposed by the ICC in connection with the administration of the arbitration, the Administration costs; and secondly, it sought to be reimbursed the legal fees and costs incurred by the Claimant, the Legal costs, in its pursuit to recover contract amounts that were due to it from the Respondents.

9.2.4 In respect of the **Administration Costs**, the Claimant stated that it had submitted proof that it had paid the entirety of the US$725,000.00 Advance on Costs that had been set by the ICC and accordingly was entitled to be refunded that amount in its entirety.

9.2.5 In respect of the **Legal Costs**, the Claimant submitted that it had paid its legal fees to date in the sum of US$370,283.22 and that a remaining amount in excess of US$163,343.00 for unbilled fees and costs for November and December 2014 was also required. Therefore, at the time of its Supplemental Submissions, the Claimant sought payment of AED4,114,800.00 in respect of its overall claim for Fees & Costs in this case.

10. THE TRIBUNAL'S ANALYSIS OF THE ISSUES IN THIS ARBITRATION

10.1 THE TRIBUNAL'S TERMS OF REFERENCE

10.1.1 As stated in section 5.1 above, three Issues were identified in the Terms of Reference in this arbitration signed on 19th March 2014, which were set out as follows:

> "*5.1 Does the Arbitral Tribunal have jurisdiction?*
>
> *5.2 If the answer to the question in paragraph 5.1 above is in the affirmative, then is the Claimant entitled to any of the relief it claimed in its Request and set out in section 3 above?*
>
> *5.3 By whom, and in what proportions, are the costs of the arbitration to be borne, as defined in Article 37 of the Rules?*"

10.1.2 As can be seen from the Prayer for Relief pleaded by the Claimant in its Post-Hearing Submission, quoted in full at paragraph 9.1.15 above, the Claimant has requested the Tribunal to make a number of specific findings within this Final Award. Whilst the three issues set out within the Terms of Reference, dealt with in this Final Award, do not correlate exactly with the specific declarations sought by the Claimant, the Tribunal's analysis of these issues does however deal with many of the declarations sought. Therefore, it should be noted that some of the following matters raised by the Claimant have been absorbed into and form part of the Tribunal's findings. Furthermore, the Tribunal is of the opinion that a specific and individual finding in respect of the following matters would be moot:

- All of the payment breaches alleged by the Claimant constitute claims for breach of the CBA because any breach of the SPA is also a cross-default under the CBA.
- Respondent No. 1 was severely undercapitalised at the time of its formation and at the time it executed the SPA and CBA Amendment No. 5 with the Claimant.
- Respondent No. 2 has served as the sole equity investor of iCapital such that iCapital would remain severely undercapitalized, if not insolvent, but for Respondent No. 2.
- Respondent No. 2 has routinely commingled his own funds with those of iCapital, both before and after iCapital Sole Establishment (S/E) ("iCapital SE") was purportedly restructured to iCapital LLC.
- iCapital's finances, both before and after iCapital S/E was restructured to iCapital LLC, have been and are overwhelmingly controlled by Respondent No. 2.
- Respondent No. 2 has used employees or subordinates from other entities within his family of companies to manage the affairs of iCapital.
- iCapital has not kept its own financial records in the ordinary course of business.
- iCapital has not issued financial statements in the ordinary course of business, nor has iCapital or Respondent No. 2 provided audited financial statements despite the Cliamant's express requests for same and as required under the CBA.
- iCapital has not held typical corporate meetings, including shareholder or board of director meetings, and has not passed resolutions or consents in lieu of corporate meetings.
- iCapital took no minutes from any shareholder or board of director meetings since no such meetings occurred.

- Any and all of iCapital's business decisions and interactions with respect to the Wareed Project were controlled and dictated by Respondent No. 2.
- The only rational inference arising as a result of the restructure of iCapital S/E to iCapital LLC was that Respondent No. 2 did so as a strategic effort to insulate himself from personal liability to the Claimant.

10.1.3 In this section, Issues 5.1 and 5.2 will be analysed and decided, whereas Issue 5.3 will be decided in section 11 below. However, before delving into the issues that have to be decided in this arbitration, the Tribunal wishes to state unequivocally that it is satisfied that both Respondents in this arbitration were afforded every opportunity of taking part in these proceedings and indeed, Respondent No. 1 did take part in the proceedings, albeit for a short period of time. In this regard, the Tribunal notes that the Secretariat notified both Respondents of the Claimant's Request for Arbitration on 30th August 2013 and in its letter of 4th October 2013 confirmed that both Respondent No. 1 and Respondent No. 2 had received the Request for Arbitration in accordance with the provisions of Article 3(2) of the Rules. Further, on 9th December 2013, the Secretariat confirmed that correspondence to Respondent No. 2 was being delivered and received at the address used. All communications since the commencement of these proceedings between the Tribunal and the Parties have been sent to both Respondents.[69] Such communications included the draft Terms of Reference; the actual Terms of Reference signed by the Claimant and the Tribunal; the transcript of the Terms of Reference Hearing and the subsequent Procedural Meeting; the revised Terms of Reference; all pleadings, including Witness Statements, in this case; all Procedural Orders issued by the Tribunal in this case; and the Transcript of the Hearing held in November 2014.

10.1.4 The Tribunal in assessing the matter of communication with the Respondents, has also taken into account the fact that it knows and has proof that both Respondent No. 1 and Respondent No. 2 have received all communications sent, since again, either intentionally or unintentionally, the Parties have either sent "***read receipts***" to the President of the Tribunal upon receipt of his e-mails or had the courier packages delivered with acknowledgements of delivery.

10.1.5 All of the above is relevant in the context that all of the Claimant's claims were uncontested and no evidence was put before the Tribunal that would disprove the Claimant's claims in this case.

10.2 ISSUE 5.1 OF THE TERMS OF REFERENCE – DOES THE ARBITRAL TRIBUNAL HAVE JURISDICTION?

10.2.1 The issue of jurisdiction in this case is unusual in that it has arisen in circumstances where to all intents and purposes, both named Respondents have failed to participate in these proceedings. The only participation from a defence point of view came at the beginning of these proceedings, where Respondent No. 1 only participated through its legal representatives, Messrs. Al Tamimi & Company, and then withdrew prior to the Terms of Reference being established, without having been provided with a power of Attorney.

[69] Following Messrs. Al Tamimi & Company's withdrawal as Respondent No. 1's legal representatives on 11th February 2014, the Tribunal wrote directly to Respondent No. 1 and Respondent No. 2.

10.2.2 During this time, Respondent No. 1 objected to the jurisdiction of not only the Tribunal but also the conduct of the Court of Arbitration. The Court of Arbitration on 14th November 2013 determined that it was *prima facie* satisfied that an arbitration agreement existed between the Parties that came within the auspices of the Rules. Accordingly, the Tribunal was appointed and shall now proceed to determine its own jurisdiction in this case in accordance with Article 6(5) of the Rules.

10.2.3 The Tribunal provided within Procedural Order No. 2, which was issued orally at the conclusion of the Procedural Meeting held on 19th March 2014, and which was further confirmed in writing to all the Parties on 24th March 2014, that the issue of jurisdiction in this case would be decided by the Arbitral Tribunal in the Final Award and the Parties' pleadings in that connection would form part of their subsequent pleadings/submissions. As neither Respondent provided any subsequent pleadings/submissions following Procedural Order No. 2, the only contentions that the Tribunal can refer to from the Respondents are those that were made by Respondent No. 1 from the commencement of this case up to its withdrawal of its Legal Advisors on 11th February 2014.

Jurisdiction over Respondent No. 1

10.2.4 In its initial correspondence and Answer referred to above, the law firm Al Tamimi & Company submitted that Respondent No. 1 objected to the jurisdiction of the Secretariat and the Court of Arbitration to administer this arbitration and stated that it would challenge the jurisdiction of any Tribunal purportedly confirmed by the Court. Al Tamimi & Company also asserted, on behalf of Respondent No. 1, that:

- The allegation that the Claimant made in its Request for Arbitration that there is an existing arbitration clause in Amendment No. 5 of the CBA was irrelevant to this Arbitration since no claim arises or is connected in fact to this contract. It was also proffered that the Claimant had alleged breaches of the SPA, which Respondent No. 1 argued, contained no arbitration agreement. Respondent No. 1 further submitted that a mere reference to an alleged arbitration provision contained in another contract in respect of which no genuine claim was being made did not render the subject claims within the scope of this ICC Arbitration.

- The signatory on behalf of Respondent No. 1 did not have either the capacity or authority to agree to arbitrate any disputes adding that there was no valid incorporation of arbitration clauses in any contract executed by the company's CEO, let alone any valid and binding arbitration agreement between Respondent No. 1 and the Claimant.

- The subject claims are not arbitrable under any applicable law and the Claimant had stated no genuine substantive dispute between the Parties, which is capable of arbitration in any event.

10.2.5 Messrs. Al Tamimi & Company also asserted that if there was an existing arbitration agreement then the law of the arbitration agreement should be the relevant law of the UAE and the place of the arbitration should be Abu Dhabi, albeit administered by the Court, pursuant to the Rules and conducted in the English language.

10.2.6 Despite making all of the aforementioned submissions on behalf of Respondent No. 1, Messrs. Al Tamimi & Company confirmed that Respondent No. 1 refused to provide it with a Power of Attorney to act on its behalf in this Arbitration.

10.2.7 The first question that falls to be determined is whether or not there is a valid arbitration agreement between the Parties in respect of which the disputes that have arisen fall to be determined. The Tribunal accepts the submissions made by the Claimant that there are express arbitration clauses contained in both the CBA and the SPA, with the arbitration clause of the CBA being both explicitly and unambiguously incorporated by reference into the SPA. As such, the Tribunal is in no doubt that the Parties to those agreements agreed to arbitrate any dispute concerning a breach of the SPA under the Rules with Paris, France as the place of the arbitration and Missouri law as the applicable substantive law.

10.2.8 As is evident from the chronology set out above in this Award, Respondent No. 1 is a signatory to the CBA in its former form as a sole proprietorship and is a signatory to Amendment No. 5 of the CBA as well as to the SPA in its current form as an LLC.

10.2.9 The original CBA contains a clear and unequivocal arbitration clause in its Section 9.3 providing that disputes shall be submitted to binding arbitration under the Rules and that the place of arbitration shall be Paris, France.

10.2.10 Amendment No. 5 of the CBA revised that arbitration clause but remained clear and unequivocal that disputes shall be submitted to binding arbitration under the Rules and that the place of arbitration shall be Paris, France unless otherwise agreed. Section 9.3 of Amendment No. 5 of the CBA provides as follows:

"***Section 9.3***
Section 9.3 (Arbitration and Injunctive Relief) of the CBA is deleted in its entirety and replaced with the following:

"Each Party to this Agreement hereby submits to binding arbitral proceedings in the event of a dispute to be heard under the exclusive jurisdiction of the International Chamber of Commerce ("the ICC") using the Rules of Conciliation and Arbitration of the International Chamber of Commerce then in effect. The proceedings shall be heard by a panel of three (3) arbitrators, with each Party selecting an arbitrator and the two selected arbitrators selecting a third, independent arbitrator deemed appropriate to hear the dispute by the ICC. In the event the party-appointed arbitrators cannot agree on a third arbitrator, that arbitrator will be appointed by the ICC. The arbitration shall be conducted in the English language in Paris, France. The Parties may alter the venue for arbitration upon mutual written agreement no later than twenty (20) calendar days after receipt of notice by the non-initiating Party. The Parties agree not to interfere, obstruct, or otherwise impact the enforcement of a lawful, issued, binding, and non-appealable award issued by the arbitral panel in any jurisdiction worldwide. Each party to this Agreement irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. The arbitrators shall award the cost of arbitration and any attorneys' fees as just and appropriate except in cases where either Party is explicitly responsible for legal fees in this Agreement or the Settlement Agreement"."

10.2.11 The SPA states clearly and unequivocally in its Article 15 that the arbitration clause in the revised Section 9.3 of the CBA as per Amendment No. 5 is applicable to the SPA. Article 15 of the SPA provides as follows:
"The arbitration provision set forth in Amendment 5 to the CBA shall be applicable to this Agreement."

10.2.12 Accordingly, the Tribunal finds that Respondent No. 1 intended to and did submit to the jurisdiction of a Tribunal such as the present one constituted under the Rules with its place in Paris, France in order to decide disputes under the CBA, as amended, and the SPA. It is quite clear from the two extracts quoted within paragraphs 10.2.10 and 10.2.11 above that both the SPA and Amendment No. 5 of the CBA, whilst being two separate agreements entered into between the Parties, are so intrinsically linked, that one would not and does not exist without the other. Clauses within each of those agreements cross-reference clauses within the other agreement and vice versa. This is never more clearly evident than in the arbitration clauses themselves, quoted within the two above-referenced paragraphs. The Parties agreed, in the clearest of terms that "***[t]he arbitration provision set forth in Amendment 5 to the CBA shall be applicable to this Agreement.***" There is no reason for the Tribunal to go behind the clear wording of the Contract, and indeed, no evidence has been presented in this case that would warrant the Tribunal taking such a step. Accordingly, the Tribunal believes and holds that the SPA does contain an arbitration clause.

10.2.13 The Tribunal also agrees with the Claimant that its claims are for breaches of both the CBA and the SPA. Respondent No. 1's failure to make payments to the Claimant was, according to the Claimant, a breach of both agreements and further, the language of the SPA could not be clearer, particularly where it provides under Section 5 that a default under that section would constitute a cross-default of the CBA. Reference is also made to sub-section 3.2 of the CBA, which provided that the payment schedule was as per Exhibit B to Amendment No. 5 of the CBA, which identifies the Overdue Amounts, Deferred Payments together with the Future Payments, that were to be paid by Respondent No. 1.

10.2.14 In respect of the assertion made by Respondent No. 1 that Mr. Al-Deeb (the signatory on behalf of Respondent No. 1) did not have the requisite capacity or authority to agree to arbitrate any disputes on Respondent No. 1's behalf, as the Claimant noted in its submissions and its former in-house counsel, Mr. Gadamsi, testified at the Hearing, Respondent No. 1 explicitly represented that it had the power and authority to enter into the agreements. In respect of the execution of the SPA, this is clear from Clause 9 of the SPA, which states as follows:

"***Corporate Representations and Warranties. iCapital hereby represents and warrants to Cerner that (i) it has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder and (ii) this Agreement has been duly authorized by all necessary action on its part. ...***"

10.2.15 Furthermore, Respondent No. 1 delivered to the Claimant a "***Special Power of Attorney and Approval of Signature***" that gave Mr. Al-Deeb the authority to act on Respondent No. 1's behalf in connection with the SPA.[70] It is clear therefore that Mr. Al-Deeb had a

[70] The said Power of Attorney, together with a certified English translation of same, was submitted as Exhibit No. 6

direct and specific authority to bind Respondent No. 1 to the obligations set out within the CBA and the SPA.

10.2.16 Indeed, Mr. Al-Deeb sent an e-mail to Mr. Gadamsi dated just one day after the execution of the SPA and Amendment No. 5 of the CBA – with Respondent No. 2 Mr. Al-Dahari copied – to expressly "***confirm***" the effectiveness of both agreements.[71] The recipients of that e-mail included the Claimant's management and Respondent No. 2, who, the Tribunal accepts, "***acceded to the statement that was made by Mr. Amro on behalf of iCapital and Mr. Al-Dahari.***"[72]

10.2.17 The Tribunal is also cognisant of the fact that Section 9 of the SPA expressly warrants that Mr. Al-Deeb had the "***full corporate power and authority to enter into this Agreement and carry out its obligations hereunder***" and provided that Mr. Al-Deeb "***has been duly authorized by all necessary action on [iCapital's] part.***" The Claimant submitted that it "***rel[ied] on this provision to confirm Mr. Al-Deeb's authority to execute the SPA for iCapital***"[73], and the Tribunal does not believe that it was unreasonable for the Claimant to do so. In this regard, the Tribunal refers to and relies upon the compelling evidence presented by the Claimant's Witness, Mr. Gadamsi of the negotiations leading up to the SPA and Amendment No. 5 of the CBA as well as the Power of Attorney given to the Claimant confirming that Mr. Al Deeb had the requisite authority to bind Respondent No. 1. It is clear from the contents of that Power of Attorney that Respondent No. 2, the owner of Respondent No. 1, signed a Power of Attorney, in which Mr. Al-Deeb was granted the full power and authorization to "***sign all transactions and documents ... and to follow up and complete transactions***"[74] on iCapital's behalf. The Claimant has suggested that this is a *broad* Power of Attorney and the Tribunal agrees. There is no limitation mentioned within the "***Special Power of Attorney***" on what agreements Mr. Al-Deeb could sign on Respondent No. 1's behalf. As already stated, he was appointed and authorised to sign "***all***" transactions and documents, but also, was authorised to "***follow up and complete those transactions.***" This is the wording of the Special Power of Attorney. If there had been a limitation on Mr. Al-Deeb's authority, then such a limitation would have to be clearly specified within the Power of Attorney. No limitation was stated or specified, and in those circumstances, it is clear that Mr. Al-Deeb's authority to enter into and to follow up and complete transactions on Respondent No. 1's behalf was, without limitation.

10.2.18 The Claimant, through its Motion for Adverse Inferences dated 6th June 2014, discussed at paragraph 2.5.8 above, had requested the Tribunal draw adverse inferences from the Respondents' failure to provide documents that would suggest that Mr. Al-Deeb did not have the requisite authority. The Tribunal does not believe that this is necessary in light of its findings at paragraphs 10.2.14 to 10.2.17.

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to the Claimant's Statement of Case. Also, see Transcript, Day Two, page 180, line 25 to page 181, line 14; & Transcript, Day Two, page 182, line 24 to page 183, line 8.

71 See Claimant's Statement of Case, Exhibit C-31. Also, see Transcript, Day Two, page 186, line 16 to page 188, line 8.

72 See Claimant's Statement of Case, Exhibit C-31. Also, see Transcript, Day Two, page 187, lines 16 to 18.

73 See Transcript, Day Two,page 182, lines 6 to 9.

74 As per Certified Translation of the "***Special Power of Attorney and Approval of Signature***", included at Exhibit 6 of the Claimant's Statement of Case.

10.2.19 Finally, in respect of the final objection Respondent No. 1 raised in respect of the Tribunal's jurisdiction over it, namely that the Claimant's claims relating to post-dated cheques, were not arbitrable "***under any applicable law***", the Tribunal rejects this. The Claimant's claims in this case quite clearly arise as a result of a breach of contract, i.e., the Respondents' failure to pay monies acknowledged as due and owing to the Claimant by the Respondents. The dispute between the Parties in this case is a simple breach of contract case and therefore, the dispute is clearly arbitrable taking into consideration the applicable law of the contract (Missouri law)[75] and the law of the place of arbitration (French law)[76], being the specific laws that the Parties themselves chose to govern their contracts and their contractual relationship, including any dispute(s) that may arise as a result.

10.2.20 Accordingly, the Tribunal determines that a valid arbitration agreement between the Claimant and Respondent No. 1 exists and that this Tribunal has the jurisdiction to deal with the disputes in existence between the Claimant and Respondent No. 1 arising from both the SPA and Amendment No. 5 of the CBA.

Jurisdiction over Respondent No. 2

10.2.21 The Tribunal will now turn to assess whether or not it has the requisite jurisdiction over Respondent No. 2.

10.2.22 It is clear from the evidence presented to the Tribunal in this case that Respondent No. 2 is not a signatory to Amendment No. 5 of the CBA or the SPA.

10.2.23 Prior to the Terms of Reference in this case, and despite its insistence that the two Respondents named in these proceedings were separate entities and that they were instructed on behalf of Respondent No. 1 only, Al Tamimi & Company unusually put forward an argument in respect of the Tribunal's jurisdiction over Respondent No. 2, namely that the Claimant had failed to submit any evidence that Respondent No. 2 was party or even signatory in his personal capacity to any document whatsoever, let alone that he was party to any arbitration agreement. As such, it was suggested by Messrs. Al Tamimi & Company that the Tribunal should dismiss the Claimant's attempt to join Mr. Al-Dahari, as Respondent No. 2, to the arbitral proceedings. The Tribunal is firmly of the view that no representation, valid or otherwise, was ever made by Respondent No. 2 in this case on the issue of jurisdiction or on any other issue for that matter. Further, as noted within paragraph 10.2.6 above, no power of attorney from any body purporting to represent Respondent No. 2 in this arbitration, has ever been placed before the Tribunal.

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[75] US Law, where the Claimant relied on the following decisions: *State ex. rel. MCS Building Co v. KKM Medical*, 896 S.W. 2d 51, 53 (Mo. App. 1995); *McCracken v. Green Tree Servicing, LLC*, 279 S.W. 3d 226, 227-28 (Mo. App. 2009); and *Estate of Athon v. Conseco Fin Servicing Corp.*, 88 S.W. 3d 26, 30 (Mo. App. 2002).

[76] French Law, where the Claimant relied on the following: Articles 1442 to 1527 of the French Code of Civil Procedure ("CCP"); "*Arbitration under Private International Law: The Doctrines of Separability and Competence de la Competence*," 17 Fordham Int'l L.J. 599, 637-38 (1994); *Societe Impex v. Societe P.A.Z.*, Judgment of May 18, 1971, Cass. civ. 1re, 1971 Bull. Civ. I, No. 161, at 134; Societe Gosset v. Societe Carapelli , Judgment of May 7, 1963, Cass. civ. 1re, 1963 Bull. Civ. I, No. 246, at 208 (Fr.); Societe Internationale du Siege v. Societe Bocui Judgment of Nov. 26, 1981, Cour d'appel de Paris, 1re Chambre suppl., [1982] Rev. Arb. 439; and *La Société Doga v HTC Sweden AB*, Supreme Court N°09-67013 (8 July 2010).

10.2.24 The Claimant has put forward three factual bases for which the Tribunal should determine that it does have jurisdiction over Respondent No. 2, namely:

(i) Ineffective restructuring of Respondent No. 1;
(ii) Respondents No. 1 & 2 were mere alter egos of each other; and
(iii) Under-capitalisation of Respondent No. 1.

Each of these issues is dealt with separately in the following paragraphs, first as a factual event and then in respect of the related legal basis that follow from and fit into such facts.

Ineffective restructuring of Respondent No. 1 resulting in a continued liability for Respondent No. 2

10.2.25 Arguments have been put before the Tribunal in respect of the restructuring of Respondent No. 1, which the Claimant has argued was ineffective and results in a continued liability for Respondent No. 2. In this respect, the Tribunal accepts that:

- Respondent No. 1 was previously structured as a UAE sole establishment which was 100% owned by Respondent No. 2;
- As sole proprietor of Respondent No. 1, Respondent No. 2 was personally liable for the debts and obligations of Respondent No. 1;
- The restructuring of Respondent No. 1 from iCapital S/E to iCapital LLC did not erase or extinguish the personal liability that Respondent No. 2 had to the Claimant for debts incurred by Respondent No. 1

10.2.26 The Claimant gave evidence to the Tribunal that the financial condition of Respondent No. 2 as joint obligor of Respondent No. 1 was a "***significant factor***"[77] in not only the Claimant's willingness to execute the CBA but also in its continued performance of its obligations thereunder, despite Respondent No. 1's performance failures. It is clear from the evidence presented to the Tribunal that the restructuring of iCapital S/E took place without notice to the Claimant contrary to the terms of Sub-section 9.16 of the CBA.[78] However, the Tribunal believes that such re-structuring did not diminish or excuse Respondent No. 2's individual liability for the existing obligations of Respondent No. 1.[79]

10.2.27 The evidence before the Tribunal of the negotiations that took place at that time is of particular relevance to this issue. The Tribunal accepts that Mr. Gadamsi and Mr. Greg White (Managing Director of the Claimant at the time) met with Respondent No. 2 himself together with Mr. Al-Deeb, and Mr. Ziad Elhendi, an executive officer of iCapital's much larger affiliate, Belbadi Enterprises LLC (also owned by Respondent No. 2), in the lobby of the Rixos Hotel, The Palm, Dubai in late September 2012. The purpose of the meeting, the Tribunal was told and also accepts, was to begin attempts to settle the dispute prior to proceeding with the next step in arbitration. Mr. Gadamsi was unable to recall with certainty if Messrs. Al Tamimi & Co. were representing both iCapital and Respondent No. 2 at the meeting, but his impression was, "***especially considering the willingness of both iCapital and Al-Dahari to engage in settlement discussions only after an agreement not to use such discussions at the arbitration against both iCapital and Al-Dahari individually, was that Al Tamimi was acting for***

[77] See paragraph 27 of the Claimant's Statement of Case.
[78] As alleged within paragraphs 27 and 28 of the Claimant's Statement of Case and confirmed in evidence through the Witness Statement of Mr. Gadamsi, page 5, paragraph 13.
[79] See Witness Statement of Mr. Gadamsi, page 6, paragraph 16.

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both Respondents at the time. Mr. Elhendi and Mr. Al-Dahari both stressed throughout the negotiations, along with Mr. Al-Deeb, that Belbadi Enterprises fully backed iCapital and that Mr. Al-Dahari had full management control over both enterprises. All deference was accorded to Mr. Al-Dahari with respect to ultimate decision-making by both Mr. Elhendi and Mr. Al-Deeb with respect to iCapital and Belbadi Enterprises each respectively."[80] (Emphasis original)

10.2.28 Following on from this meeting, in December 2012, the Parties entered into the SPA, which addressed both iCapital's overdue payments together with future payments that would become due and owing to the Claimant under the terms of the CBA. Mr. Gadamsi testified that he had been directly involved in the negotiation of that agreement and stated that the intention of the Parties and the purpose behind the agreement was both to forever quantify the amount owed to the Claimant for past performance, and to reschedule Respondent No. 1's payment obligations in respect of the Claimant's future performance.

10.2.29 It is clear from the terms of the SPA that it addressed events prior to 31st October 2012, and embodied the Parties' agreement that, as of that date, AED118,722,088.00 was due and owing from iCapital S/E to the Claimant. This was expressly defined in the Agreement as the "***Overdue Amount***". Further, it is clear to the Tribunal that the SPA contains Respondent No. 1's explicit acknowledgement of the Claimant's full performance of the CBA up to the effective date of the Agreement, and explicitly waived any claims of breach with respect to any past performance prior to the effective date of such agreement. As well as entering into the SPA, the Parties also executed Amendment No. 5 of the CBA, which scheduled both a series of deferred payments and a series of future payments, for services that the Claimant was continuing to provide pursuant to the CBA.

10.2.30 Mr. Gadamsi provided evidence to the Tribunal that the purported restructuring of iCapital S/E as an LLC under UAE law, in or around the middle of 2012, led him to object "***to the restructuring and den[y] any legal effect upon the personal obligation of Al-Dahari to pay the outstanding debts of iCapital at that time.***"[81] This, Mr. Gadamsi pointed out, was in accordance with the terms of the CBA, which specifically forbade such a restructuring without the consent of the Claimant. The terms of the SPA clearly indicate that iCapital S/E had, at that stage, re-organized itself from a sole establishment to a limited liability company and placed the obligations of the SPA and Amendment No. 5 of the CBA upon Respondent No. 1. The Tribunal accepts that Respondent No. 2 was not a signatory to the SPA or Amendment No. 5 of the CBA in his personal capacity as the former sole proprietor of iCapital S/E. However, the Tribunal is of the opinion that he remained personally liable for the agreed Overdue Amount, which related to the Claimant's acknowledged performance prior to its consent to the restructuring of iCapital S/E.

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[80] See Witness Statement of Mr. Gadamsi, page 6, paragraph 16.
[81] See Witness Statement of Mr. Gadamsi, page 5, paragraph 13. Also, see Transcript for Day 2, page 155, lines 17 to 19.

10.2.31 The timing of the re-structuring of iCapital S/E is also of significant relevance to the Tribunal, in that it occurred in or around the same time as the Claimant commenced its first arbitration in September 2012, which then led to the SPA being entered into. In this regard, the Tribunal determines that the restructuring of iCapital from a Sole Establishment to a Limited Liability Company was made in direct contravention of the clear stipulation within the terms of the CBA, which required the Claimant's consent for such a restructure to be validly made.

Respondents No. 1 & 2 as mere alter egos of each other

10.2.32 Submissions were also put before the Tribunal in respect of the interests shared between the two Respondents and whether or not there were factual grounds that would warrant the Tribunal piercing the corporate veil. The Claimant submitted that Respondents Nos. 1 and 2 were mere alter egos of each other, in that they shared a complete unity of interest and disregarded the corporate form in their operations, in their management structure, and in their promises with respect to performance of the Amended CBA, as well as the SPA[82].

10.2.33 The Claimant argued that Respondent No. 1 continued to operate exactly as iCapital S/E had done: it had the same offices, the same business purpose, the same employees, and, as such, there should be no distinction in Respondent No. 2's personal liability for the debts of either entity.

10.2.34 In this regard, the Tribunal relies on the evidence of Mr. Gadamsi, former in-house Counsel of the Claimant and witness of fact on its behalf whose evidence at the Hearing the Tribunal considered particularly credible and helpful. As Mr. Gadamsi explained in his witness statement, both iCapital, and its primary shareholder, Respondent No. 2, made express promises that iCapital would clear its debt to the Claimant and that Respondent No. 2 would guarantee that the Claimant would be paid. Mr. Gadamsi was insistent that there was "***no legal distinction between the two Respondents***",[83] and as such, the Claimant relied upon these promises in its decision to forego a more prompt arbitral adjudication of its payment rights. It was this decision that led the Claimant and iCapital (being represented by Messrs. Al Tamimi & Co.) to agree "***to enter into settlement negotiations that could not be used in any arbitration***"[84].

10.2.35 Whilst Respondent No. 2 used employees from other entities to help lead the negotiations surrounding the SPA with the Claimant, the Tribunal is in no doubt that it was Respondent No. 2 himself who was the ultimate arbiter of decisions. As Mr. Gadamsi testified at the Hearing, Mr. Al-Dahari was the "***sole proprietor***" of iCapital S/E, owning 100% of the company and having full management control over it[85], and, as iCapital's sole proprietor, Mr. Al-Dahari was "***personally responsible***" for the "***entirety of***" iCapital's debts.[86] As Mr. Gadamsi confirmed, "***a promise by iCapital would have been equivalent to a promise by Al-Dahari.***"[87] The Claimant believed that "***Mr. Al-***

[82] See Witness Statement of Mr. Gadamsi, page 6, paragraph 16
[83] See Witness Statement of Mr. Gadamsi, page 5, paragraph 12.
[84] See Witness Statement of Mr. Gadamsi, page 5, paragraph 16.
[85] See Transcript, Day Two, page 136, lines 10 to 15.
[86] See Transcript, Day Two, page 136, lines 16 to 20.
[87] See Transcript, Day Two, page 136, lines 21 to 23.

Dahari is iCapital, and we felt that he was still responsible for the debts of his – of the companies that he owned."[88]

10.2.36 Respondent No. 2, the Claimant put forward, is the 99% shareholder of the newly re-organized iCapital LLC, Respondent No. 1 herein, and as such, wielded all power over not only iCapital S/E, but also its successor entity, Respondent No. 1.

10.2.37 A further argument put forward by the Claimant, which was confirmed by Mr. Gadamsi, was that Mr. Al-Dahari, as iCapital S/E's sole proprietor, certainly remained liable for the AED74 million Overdue Amount that remains unpaid (together with AED28.6 million in Accrued Interest) because he was never released from his obligation for pre-conversion of iCapital debts. In support of this assertion, Mr. Gadamsi, as one who personally negotiated the SPA on the Claimant's behalf, explained that the Parties, in negotiating and finalizing the SPA, intentionally did not include Mr. Al-Dahari in the SPA's waiver provision in order to maintain his liability in respect of iCapital's pre-LLC liability:
"***We definitely wanted to move on and turn the page, but with the past due amount, that was something ... that had already accrued. So that was something that we felt very strongly about iCapital and Mr. Al-Dahari being responsible for.***"[89]

10.2.38 This is clear from the unambiguous terms of paragraph 7 of the SPA: whilst all claims against iCapital S/E, its directors, officers and employees had been waived, no claim against its **owner**, specifically Respondent No. 2, had been waived. Accordingly, Respondent No. 2 was still bound to the Claimant. Mr. Gadamsi testified that this was clear to all Parties involved at the time the SPA was entered into. A further matter, which the Tribunal finds relevant, is that Section 7 of the SPA relates specifically to a waiver and release of past claims to the Parties of that agreement. As Respondent No. 2 was not a party to the SPA, he cannot thereby come within the ambit of the waiver contained therein.

10.2.39 Mr. Gadamsi in his evidence before the Tribunal, made reference to the meeting that was held at the Rixos Palm Hotel in Dubai, as already discussed at paragraph 10.2.32 above, and confirmed that there were multiple direct communications with Respondent No. 2.[90] In that meeting, and in all other meetings with iCapital, Mr. Gadamsi testified that there was no "***substantive difference***" between iCapital's interests and those of Respondent No. 2 in terms of the settlement of the dispute with the Claimant.[91] Whilst acknowledging that Mr. Ziad Elhendi and Mr. Al Deeb were also in attendance at that meeting with Respondent No. 2, and that additional direct settlement negotiations had taken place with Mr. Elhendi and Mr. Al Deeb[92], Mr. Gadamsi insisted "***there was never any question, whether through subordinates or directly, that it was Mr. Al-Dahari making the decisions on behalf of iCapital***".[93]

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[88] See Transcript, Day Two, page 193, lines 13 to 21.
[89] See Transcript, Day Two, page 166, lines 16 to 24.
[90] See Transcript, Day Two, page 195, line 21 to page 196, line 15.
[91] See Transcript, Day Two, page 197, lines 4 to 13.
[92] See Transcript, Day Two, page 197, lines 14 to 19; & page 199, lines 3 to 7.
[93] See Transcript, Day Two, page 198, lines 12 to 16.

10.2.40 The Tribunal accepts Mr. Gadamsi's assertion that "***Mr. Al-Dahari was calling the shots for both iCapital and Belbadie Enterprises. That was clear.***"[94] Such a suggestion makes complete sense in terms of Respondent No. 2's vested interest in both iCapital and in the outcome of the settlement negotiations.

10.2.41 Upon being questioned by the Tribunal as to why the Claimant would enter into a further agreement, namely the SPA, and not name Respondent No. 2 as a party to that agreement, Mr. Gadamsi explained that a significant motivating factor was the fact that the Claimant had been given three post-dated cheques by Respondent No. 1 in satisfaction of the outstanding amount due to the Claimant prior to the execution of the CBA, and that under UAE law "***a post-dated cheque that bounces is a criminal offence both against the person that's executing it and the owners of the company to which the signatory is on. So that would have brought into play Mr. Al-Dahari, Mr. Al-Dahari's son and Amro Al-Deeb at the time that those cheques were signed.***"[95] Mr. Gadamsi also testified that the Claimant had been comforted by the corporate guarantees that had been issued by Belbadi Enterprises LLC, the parent affiliate, all of which Respondent No. 2 signed and authorised.

10.2.42 With its Post-Hearing Submissions, the Claimant added to the evidence in this regard, exhibiting further e-mails demonstrating what it alleged was "***the intimate involvement of Al-Dahari in all aspects of iCapital's involvement in the Wareed Program***".[96] These were:

a. An e-mail from an executive of the Claimant and original CBA signatory, Mr. Rich Berner, dated 31st December 2009[97], demonstrating that Mr. Al-Dahari was the sole financial and operational decision-maker for iCapital. iCapital had already fallen substantially behind on its payments to Cerner under the CBA as of December 2009, prompting the Claimant's efforts to negotiate a business solution for iCapital to become current. As Mr. Berner noted, Cerner attempted to meet with Mr. Al-Deeb "***per Ahmed [Al-Dahari's] instructions this morning***", and the Claimant tried to focus Mr. Al-Deeb on "***getting the $6.1M wired versus discounting with help from Ahmed [Al-Dahari] by calling the bank.***" Mr. Berner then recommended that another Claimant representative, Trace Devanny, directly call Mr. Al-Dahari to "***ask he write us a check for the $10M or wire by Saturday.***"

b. An e-mail dated 11th March 2013[98] confirming Mr. Al-Dahari's sole control over iCapital and its involvement in the Wareed Programme. The e-mail communicated that the MOH had "***grown tired***" of iCapital's failure to honour its commitments within the Wareed Programme, both operationally and financially. As Mr. White of the Claimant noted, the MOH would likely opt to address iCapital's ongoing performance failures "***directly***" with "***Ahmed [Al-Dahari] behind closed doors in an Emirati-to-Emirati discussion.***"

c. An e-mail exchange between Mr. John Peterzalek and Mr. Mike Vesser of the Claimant, dated 11th July 2013[99], reinforcing the notion that it was Mr. Al-Dahari

[94] See Transcript, Day Two, page 198, line 17 to page 199, page 7.
[95] See Transcript, Day Two, page 168, lines 19 to 25.
[96] See Claimant's Post-Hearing Submissions, pages 3, 10 & 11.
[97] See Claimant's Post-Hearing Submission, Exhibit C-36.
[98] See Claimant's Post-Hearing Submission, Exhibit C-37.
[99] See Claimant's Post-Hearing Submission, Exhibit C-38.

who needed to confirm and approve any iCapital action. The e-mail runs contemporaneously with a discussion that Mr. Peterzalek had with Mr. Al-Dahari regarding iCapital's growing debts to Cerner. In it, Mr. Vesser asked Mr. Peterzalek: "***How did the conversation with Ahmed [Al-Dahari] go last night?***", to which Mr. Peterzalek responded: "***We had a short but pointed discussion ... pretty much the same outline and promises ... [Al-Dahari] and I will speak in a week ... he felt he would have some $$ by then.***"

10.2.43 The Tribunal is of the view, certainly in respect of Mr. Peterzalek's e-mail, which refers to a contemporaneous discussion he had with Respondent No. 2 on or around 11th July 2013, that Respondent No. 2 was a source, if not the main source, of funds for iCapital's payment obligations to the Claimant. All of these allegations regarding Respondent No. 2's role were confirmed by the Claimant's witness Mr. Maygnan who testified that Respondent No. 2 wielded direct control over iCapital's finances, who had used Mr. Elhendi and Mr. Al-Deeb to negotiate the terms of the SPA in 2012, who would revert back to Respondent No. 2 and "***use his feedback to continue the discussion.***"[100]

10.2.44 Mr. Maygnan also testified that, following the execution of the settlement contracts, Respondent No. 2 "***personally came to a booth at a trade show***" where Mr. Maygnan and Mr. Greg White of the Claimant were present and specifically "***asked us to not present the cheque on the due date of January 31st and that he instead would arrange for a letter of credit to be issued to Cerner.***"[101] Mr. Maygnan testified that Respondent No. 2 had explained that he did not want the Claimant to present the second post-dated check because "***there was not enough funds in the iCapital account to honour that cheque and that that cheque would bounce ... if [Cerner] presented it.***"[102] The Tribunal found Mr. Maygnan's testimony in this respect to be particularly compelling and accepts, in the absence of evidence to the contrary, that this exchange did indeed happen.

Undercapitalisation

10.2.45 Arguments were also put before the Tribunal by the Claimant in respect of the inadequate capitalisation of Respondent No. 1 and the Claimant submitted that this should not be used as a vehicle for Respondent No. 2 to avoid personal liability for the debts of Respondent No. 1.

10.2.46 Mr. Gadamsi explained in his Witness Statement that Respondent No. 1 was undercapitalized at the time of its formation in 2012 since soon after its formation, pursuant to the terms of the SPA, it presented post-dated cheques to the Claimant in the amount of AED118 million, with an express promise that funds would be available when the dates on the cheques came current, and yet it is now obvious that Respondent No. 1 did not have sufficient funds for those payments. It is notable that at various times in these proceedings, the Claimant has presented arguments that suggest that it was iCapital who made the express promise that funds would be available[103], and at other times, has presented arguments that suggest that it was both iCapital as well as Respondent No. 2 who made such express promises[104]. These facts further corroborate the allegations made by the Claimant and the findings of the Tribunal, that the relationship between Respondent No. 1 and Respondent No. 2 regarding dealings relating to the CBA, the SPA and Amendment No. 5 to the CBA were so intrinsically linked that it would be incorrect and wrong to distinguish between the two Respondents in this case.

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[100] See Transcript, Day Two, page 252, line 18 to page 253, line 1.
[101] See Transcript, Day Two, page 242, line 23 to page 243, line 1.
[102] See Transcript, Day Two, page 243, lines 2 to 8.
[103] See paragraphs 3.1.5 and 7.3.13 of this Final Award.

10.2.47 Mr. Gadamsi explained further that Respondent No. 2, having reformed iCapital as an LLC in, what the Claimant alleged was, an effort to insulate himself from personal liability for the increasing debts of iCapital S/E, was obligated to capitalize the company with sufficient funds to allow it to perform under its existing contractual commitments. There is no doubt that Respondent No. 2 failed to do so, and further has failed to prove he has done so.

The Law

10.2.48 The Tribunal questioned the Claimant at the Hearing regarding what law should apply to the issue of jurisdiction.[105] More specifically, the Tribunal questioned the Claimant about the law of the contract (Missouri law), the law of the place of arbitration (French law), the law where Respondent No. 1 was incorporated (UAE law), and transnational principles that might apply and asked the Claimant how it reached the conclusion that Missouri law is the law it should turn to on the issue of jurisdiction.[106] The Claimant made oral submissions in this regard at the Hearing, and argued that whilst Missouri law is the relevant law, there was support for the law of the place of arbitration being applied, namely French law, with the application of either law leading to the same answer.[107] The Tribunal requested that the Claimant submit any specific authorities it relied upon in this regard with its Post-Hearing Submissions[108], which the Claimant did[109].

10.2.49 In its Post-Hearing Submissions, the Claimant submitted that irrespective of whether the Tribunal considers only the Contract itself (a transactional notion of arbitration jurisdiction), or whether it looks at the law that the Parties chose to govern their contract relationship (US), the law where the arbitration hearing was held (French), or the law of the international arbitration treaty to which the US and the UAE are both signatories (the New York Convention), all sources support the unambiguous choice made by these commercial parties, *i.e.*, that all sources support finding that jurisdiction exists over both Respondents.[110] The Claimant submitted further that ***"under both Missouri law and French law, this arbitration clause is plainly enforceable and encompasses this straightforward contract dispute."***[111]

[104] See paragraphs 6.1.10, 7.3.6 and 8.9 of this Final Award.
[105] See Transcript, Day One, page 30 to page 35.
[106] See Transcript, Day One, page 30 to page 31.
[107] See Transcript, Day One, page 31 to page 34.
[108] See Transcript, Day One, page 34 to page 35.
[109] See Section III A, B & C of the Claimant's Post-Hearing Submissions.
[110] See Section III of the Claimant's Post-Hearing Submissions.
[111] See footnote 9 of the Claimant's Post-Hearing Submissions.

10.2.50 In this regard, the Claimant submitted that there were two legal bases in support of its argument that the Tribunal had the requisite jurisdiction over Respondent No. 2[112]:

(i) Respondent No. 2 was the Sole Proprietor of iCapital S/E and therefore was liable for iCapital S/E's legal obligations, and Respondent No. 2's attempt to escape personal liability as sole proprietor by restructuring iCapital S/E into Respondent No. 1 should not be rewarded; and
(ii) Respondent No. 1 is the alter-ego of Respondent No. 2 and as such, the corporate veil between them both should be lifted.

10.2.51 Based on the presentation of the facts and authorities put forward by the Claimant, the Tribunal considers that the Claimant's arguments in effect are that Respondent No. 2 has implicitly consented to the arbitration agreement and has also abused the corporate form in a manner justifying the lifting of the corporate veil to bind Respondent No. 2 to the arbitration agreement. Dealing with the submissions presented in respect of item (i) in the previous paragraph, in order for Respondent No. 2 to be found liable for the legal obligations of iCapital S/E, the Claimant must have proved, in accordance with UAE law, that iCapital S/E was "***a sole proprietorship***". This proposition emanates from the decision of the Dubai Court of Cassation in Decision No. 20/2008 of 2nd March 2008, which provides as follows:

"***A private commercial establishment or a sole proprietorship has no legal personality independent of the person of its owner or the holder of the trade license relating to it. Such establishment is just one of the elements of his own financial liability, and the owner of it or the owner of the relevant trade license will bear the obligations and debts of it. A judgment passed against it will be enforceable as against him to the extent that the judgment shows that the establishment has a liability.***"

10.2.52 The Tribunal accepts firstly, that iCapital S/E, as the name itself indicates, was a sole proprietorship, that was owned wholly and exclusively by Respondent No. 2. As such, the Tribunal determines, in accordance with the decision of the Dubai Court of Cassation, quoted in the previous paragraph, that iCapital S/E had no "***legal personality independent of***" Respondent No. 2 in this case, being "***the person of its owner or the holder of the trade license relating to it.***" Accordingly, it is clear, following the Decision of the Dubai Court of Cassation quoted above, that Respondent No. 2 "***as the owner of [iCapital S/E]...will bear the obligations and debts of [iCapital S/E]***". Therefore, the Tribunal determines that Respondent No. 2 is personally liable for all of iCapital S/E's obligations. The Tribunal's finding is further supported by the decision referred to by the Claimant in *Minn. Laborers Health & Welfare Fund v. Scanlan*[113], where the Court held that a sole proprietor is personally liable for all debts of the sole proprietorship even where that sole proprietorship converts to a limited liability company.[114] Accordingly, based on the facts and authorities before the Tribunal referred to above, even **after** the restructure of iCapital as a limited liability company, it is clear that Respondent No. 2 as a matter of fact had consented to be bound by the arbitration clause and was not released from obligations under the CBA as the "*owner*" of iCapital, including the agreement to arbitrate any disputes that may arise up to the execution of the SPA, at which time the Claimant agreed to recognise the restructuring of iCapital as a limited liability company. In this respect, the Tribunal specifically refers to its findings at paragraph 10.2.38 above, where it is noted that claims against Respondent No. 2 as owner of iCapital, had not been waived and accordingly, Respondent No. 2 remained liable to the Claimant.

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[112] See Section IV of the Claimant's Post-Hearing Submissions.
[113] *Minn. Laborers Health & Welfare Fund v. Scanlan*, 360 F.3d 925, 928 (8th Cir. 2004). The Claimant also relied upon the decision *Baker v. Dorfman*, 2000 U.S. Dist. LEXIS 10142 (S.D. N.Y. July 21, 2000), *aff'd* 232 F.3d 121 (2d. Cir. 2000).
[114] The Court in its Judgment also made reference to the decision in *Kapp v. Naturelle, Inc.*, 611 F.2d 703, 709 (8th Cir. 1979), where the Court stated: "*[W]hen a business is incorporated after having been conducted for a period of time as a partnership or sole proprietorship, the partners or proprietor may remain personally liable to creditors who deal with them as before without actual or constructive notice of the incorporation.*"

10.2.53 The Tribunal turns now to deal with item (ii) above, and whether or not there is sufficient evidence before it that would warrant the corporate veil between Respondent No. 1 and Respondent No. 2 being lifted. For the Claimant to be successful in this argument, the Tribunal must determine that the degree of control exercised by Respondent No. 2 over the affairs of Respondent No. 1 was sufficient to determine that effectively, Respondent No. 2 was the alter ego of Respondent No. 1.[115] In this respect the Claimant relied upon the case of *66, Inc. v. Crestwood Commons Redevelopment Corp.*[116], where the plaintiff sued a corporation that was owned by a joint-venture. The plaintiff in this case argued that the joint-venture should be held liable for the corporation's debt. In reaching its decision, the Court provided as follows:

"***The degree of control that [the joint venture] exercised over [the corporation] equals or exceeds the degree of control that … is sufficient to find that the corporation is the alter ego of its shareholders in order to pierce the corporate veil and hold the shareholders liable for the corporation's legal obligations.***"[117]

10.2.54 The Tribunal is satisfied that the evidence presented by the Claimant in respect of the involvement of Respondent No. 2 in the affairs of iCapital, proves that at all material times, Respondent No. 2 has been the alter ego of iCapital such that jurisdiction over, and the potential liability of iCapital, is indistinguishable from jurisdiction over, and the potential liability of Respondent No. 2. The Tribunal's decision in this respect has been compelled by the evidence that has been presented in this case, particularly surrounding the meeting held in the Rixos Palm Hotel; the negotiations of the SPA and the significant involvement of Respondent No. 2 in those happenings. The Tribunal accordingly, is left in no doubt as to the control that he ultimately exercised over Respondent No. 1. The Tribunal finds of particular relevance in this respect the emails that were submitted by the Claimant in its Post-Hearing submissions, discussed at paragraph 10.2.42 above, as well as the approach that was made by Respondent No. 2 to representatives of the Claimant at the trade show, as referenced within paragraph 10.2.44 above. There are other considerations that the Court in *66, Inc. v. Crestwood Commons Redevelopment Corp.*, considered, namely the criteria that should be established so as to warrant a court or this Tribunal "***disregard[ing] the corporate entity and hold[ing] the corporate owners liable***", namely:

"***1) Control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction***

[115] *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W. 2d 32, 40 (Mo. 1999).
[116] See Claimant's Post-Hearing Submission, page 22 and their reliance on the decision in *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W. 2d 32, 40 (Mo. 1999).
[117] *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W. 2d 32, at page 41.

attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and

2) *Such control must have been used by the corporation to commit fraud or wrong, to perpetrate the violation of statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and*
3) *The control and breach of duty must proximately cause the injury or unjust loss complained of.*"[118]

The Tribunal has considered each of these criteria. Firstly, as the Tribunal has already found and determined at the beginning of this paragraph, the involvement of Respondent No. 2 in the affairs of iCapital proves that, at all material times, Respondent No. 2 has been the alter ego of iCapital to such an extent that iCapital had at no time, any "***separate mind, will or existence of its own***"[119]. Secondly, the Tribunal is in no doubt that the control exercised by Respondent No. 2 in this case, not only in terms of iCapital's finances and the decision to restructure iCapital S/E, but also in the decision surrounding the timing of the restructure and the purpose behind the restructure was used in an effort "***to commit ... [a] wrong, to perpetrate the violation of ... [a] positive legal duty ... in contravention of [the Claimant's] legal rights***", namely by breaching the clear terms of the CBA, the SPA as well as Amendment No. 5 to the CBA. The Tribunal is further satisfied that this control that was exercised by Respondent No. 2 over iCapital, and the resultant violation of iCapital's positive legal duty under the terms of the CBA, the SPA and Amendment No. 5 to the CBA, led to the claims that the Claimant has made in this case. Accordingly, the factual circumstances, as proved to the satisfaction of the Tribunal in this case, warrant the Tribunal's finding that it has jurisdiction over Respondent No. 2 in this case.

10.2.55 Whilst arguments were put forward to suggest that the undercapitalisation of Respondent No. 1 by Respondent No. 2 should lead the Tribunal to disregard the existence of Respondent No. 1 and made Respondent No. 2 personally liable, (i.e. pierce the corporate veil) the Tribunal finds that the evidence and legal arguments submitted by the Claimant are not sufficient to establish jurisdiction over Respondent No. 2 on this basis. This however does not change the fact that in light of the Tribunal's findings at paragraph 10.2.51 above, the Tribunal does have the requisite jurisdiction over Respondent No. 2 in this case.

10.2.56 It should also be noted that the Claimant, through its Motion for Adverse Inferences dated 6th June 2014, discussed at paragraph 2.5.8 above, had requested the Tribunal draw adverse inferences from the Respondents' failure to provide documents that would prove that Respondent No. 2 was not the alter ego of Respondent No. 1; that neither of the Respondents shared a unity of interest; or indeed that Respondent No. 2 should not be held jointly and severally liable for the debts of Respondent No. 1. The Tribunal does not believe that this is necessary in light of its findings at paragraphs 10.2.29 to 10.2.54 above.

10.3 ISSUE 5.2 OF THE TERMS OF REFERENCE – IS THE CLAIMANT ENTITLED TO THE RELIEF CLAIMED WITHIN THE REQUEST FOR ARBITRATION

[118] *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W. 2d 32, at page 40.
[119] *66, Inc. v. Crestwood Commons Redevelopment Corp.*, 998 S.W. 2d 32, at page 40.

10.3.1 Having decided that the Arbitral Tribunal has jurisdiction over Respondent No. 1 and Respondent No. 2, it is now appropriate that it deals with the remaining issues in this arbitration. There were essentially four claims made by the Claimant contained in Issue 5.2, which were in respect of the following:

- Unpaid Overdue Amounts;
- Unpaid Accrued Interest on the Overdue Amounts;
- Unpaid Deferred and Future Payments; and
- Unpaid Post-Settlement Interest.

10.3.2 Each of these claims will be dealt with separately in the following parts of this section of the Award.

10.4 UNPAID OVERDUE AMOUNT – AED74,042,098.20

10.4.1 This part of the Award will deal with the Claimant's claim for "***Unpaid Overdue Amounts***", which is calculated at AED74,042,098.20.

10.4.2 The Tribunal accepts that on or about 7th October 2008, iCapital S/E entered into a contract with the MOH of the UAE in respect of the provision of a Health Information System, the purpose of which was to create a consolidated electronic medical information platform in the UAE. This project was known as the Wareed Programme. iCapital S/E, pursuant to that contract, was the general/main contractor for the Wareed Programme and, as such, was responsible for subcontracting with third parties to provide the products and services necessary to create the consolidated electronic medical information platform. One of those subcontracts was the contract the subject matter of these proceedings that was entered into between iCapital S/E and the Claimant, also known as the CBA.

10.4.3 Pursuant to the terms of the CBA, the Claimant was contracted to design, install, implement and maintain the Wareed Programme's platform of health care information, software solutions and related equipment. It is clear to the Tribunal from the terms of the CBA that there was express provision for detailed payment schedules, more precisely, specific date-based payments that were to be made by iCapital S/E to the Claimant.

10.4.4 The Claimant has argued before the Tribunal that, in accordance with its obligations under the terms of the CBA, the Claimant delivered the software called for under the CBA in September 2008 and began its implementation efforts. The Claimant also argued that it had implemented and maintained the key licensed software that would allow health care information to be accessible to, and utilised by, UAE medical professionals on an integrated electronic platform. Further, the Claimant granted iCapital S/E a software license; provided related hardware and equipment; and delivered specifically defined installation, implementation, maintenance, support and other professional services.[120]

10.4.5 The Tribunal has no reason to doubt that this was indeed the case for the following reasons. Firstly, no evidence to the contrary has been put before this Tribunal, despite both Respondents being afforded ample opportunity to do so. Secondly, the work that the Claimant alleged to have been carried out by it under the terms of the CBA has been acknowledged and indeed documented in a further contract entered into between the

[120] See Claimant's Opening Submission, pages 4 & 5.

Parties on 29th December 2012, namely the SPA signed by the Claimant, Respondent No. 1 and Messrs. Belbadi Enterprises LLC, of which Respondent No. 2 was noted to be the Chairman.[121]

10.4.6 The Claimant submitted that "***[g]iven the performance acknowledgement contained in the SPA, [the Claimant] need not present any detailed proof of its performance prior to October 31, 2012***" and that given the Respondents' refusal to participate in these proceedings "***the attestations contained in the … Witness Statements concerning post-settlement performance by [the Claimant] are uncontested.***"[122]

10.4.7 The Tribunal is indeed convinced that an appropriate starting point for analysing and determining the issue of the Claimant's claim for Unpaid Overdue Amounts is the SPA. This conclusion was arrived at due to the explicit acknowledgement contained in Paragraph (B) of the Preamble to the SPA, whereby Respondent No. 1 expressly confirms the Claimant's full performance of the CBA up to the effective date of the Agreement, and the Claimant's entitlement to certain overdue amounts.

10.4.8 The Tribunal notes, in particular, Paragraph (B) of the Preamble to the SPA, which provides as follows:
"***the Parties have determined, through direct, good faith, knowledgeable negotiation, and mutual settlement, that the principal amount owed to Cerner and past due through October 31, 2012 (the "Overdue Amount Settlement Date") under the CBA for past performance by Cerner of its obligations thereunder equals one hundred eighteen million, seven hundred twenty two thousand, eighty eight Arab Emirati Dirhams (AED 118,722,088) (the "Overdue Amount")***".[123]

10.4.9 Furthermore, Paragraph (C) of the Preamble to the SPA provides that "***the Parties desire to enter into this Agreement, setting forth the schedule and form of payments to be made to Cerner for the Overdue Amount, which amount has never been paid or contested***".[124]

10.4.10 In light of the clear and unequivocal declarations in the SPA, which was signed by Respondent No. 1 and of which the Tribunal is in no doubt that Respondent No. 2 was equally aware and conscious of, the Tribunal is convinced of the Claimant's full performance of the CBA up to the effective date of the Agreement, and the Claimant's entitlement to certain overdue amounts. Respondent No. 2 was, as the Tribunal has already determined[125] heavily involved in the negotiations surrounding the SPA and it would be a nonsense to suggest that the SPA would have contained such clear and unequivocal declarations if the Claimant's had in any way failed to perform its obligations under the CBA.

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[121] The SPA was annexed to the Claimant's Statement of Case as Exhibit 2.
[122] See Claimant's Statement of Case, paragraph 35.
[123] Again, the Tribunal points to the discrepancy in the amount mentioned in the Preamble to the SPA (AED118,722,088.00) and that mentioned in Schedule A of the SPA (AED118,722,098.20).
[124] Emphasis added.
[125] See a summary of Mr. Gadamsi's evidence surrounding the settlement negotiations and Respondent No. 2's involvement at paragraph 7.3.8, which has been relied upon by the Tribunal in its findings at 10.2.31, 10.2.43 and 10.2.53.

10.4.11 The Claimant submitted that the SPA was executed following repeated payment breaches by Respondent No. 1 and was negotiated and executed to resolve an initial arbitration filed by the Claimant against Respondent No. 1, Respondent No. 2 and iCapital Sole Establishment.[126] The Claimant further asserted that this Agreement is reflective of the terms that were agreed as of 29th December 2012 regarding the sum of AED118,722,088.00 that the Claimant asserted was due and owing to it by Respondent No. 1.[127] Further, the SPA sets out a schedule, Schedule A, by which Respondent No. 1 was required to make incremental payments towards the Overdue Amount of AED118,722,088.00 and further obliged Respondent No. 1 to provide a series of post-dated cheques to the Claimant as security for such incremental payments.[128]

10.4.12 Article 4 of the SPA stipulates that "***in the event any payment owed pursuant to this Agreement is not honoured when presented for payment in accordance with Schedule A (Payment Schedule) or otherwise post in Cerner's account as clearing in accordance herewith, the full amount of that payment and all remaining payments under this Agreement ... shall be accelerated and shall become immediately due and payable in full***".

10.4.13 Additionally, the SPA makes reference to the "***Effective Date Accrued Interest Amount***", as defined in Amendment No. 5 of the CBA,[129] and provides that if Respondent No. 1 breached its payment promise before full payment of the first three payments called for in the Schedule (totalling AED58,750,490.37), that an agreed amount of Accrued Interest of AED28,684,772.00 would become immediately payable. In this respect, Article 3.3 of Amendment No. 5 of the CBA provides:
"***The Client acknowledges that interest in accordance with Section 7.1(F) (general) of the CBA has accrued for late payments owed to Cerner by the Client in the amount of AED 28,684,772 as of October 31, 2012 (such amount, the "Accrued Interest Amount"). Cerner agrees to waive its right to the Accrued Interest Amount the Effective Date (with no chance of revival) in its entirety upon the fulfilment of all conditions precedent required to effectuate this Amendment and the clearance of post-dated cheque nos. 1, 2, and 3***".

10.4.14 The Claimant submitted that the first post-dated cheque in the amount of AED9,175,000.00 was presented for payment on its due date of 29th December 2012, and that it was subsequently cleared and posted in its account.[130]

10.4.15 Mr. Pascal Maygnan, the Claimant's Finance Manager, testified during Day 2 of the Hearing conducted on 18th November 2014 as follows:

"***Mr. Allison: Let's talk about the first cheque. The date of the first post-dated cheque is what?***

Mr. Maygnan: So the date is December 29, 2012.

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[126] See Claimant's Statement of Case, paragraphs 1 & 2.
[127] The actual figure is AED118,722,098.20, as can be seen from Table No. 7.5.8 above.
[128] A total of seven cheques of unequal values were issued by Respondent No. 1 in favour of the Claimant for a gross total of AED118,722,098.20 with cheque no. 1 dated 29th December 2012 and cheque no. 7 dated 20th May 2014.
[129] Amendment No. 5 to the CBA was signed on the same day the SPA was signed, i.e. on 29th December 2012.
[130] See Witness Statement of Mr. Pascal Maygnan, paragraph 18. Also, see Transcript, Day Two, pages 240 to 241.

Mr. Allison: *Is that the same date; it's the date of the Settlement Agreement and Amendment No. 5?*

Mr. Maygnan: *Yes, I believe.*

Mr. Allison: *And did Cerner present that cheque for payment on December 29, 2012?*

Mr. Maygnan: *Yes, we presented the cheque as soon as we got it.*

Mr. Allison: *And did the cheque clear?*

Mr. Maygnan: *Yes, it cleared.*

Mr. Allison: *And Cerner has received 9.175 million Dirham as a result of that?*

Mr. Maygnan: *We did receive it.*

Mr. Allison: *And so that has reduced the overdue amount to 109.6 million Dirham approximately?*

Mr. Maygnan: *Exactly.*"

10.4.16 The Claimant stated that the second post-dated cheque in the amount of AED14,825,000.00 was not presented for payment on its due date of 31st January 2013. The reason for this proffered by the Claimant was that Respondent No. 2 had requested this, advising the Claimant that funds were not available in Respondent No. 1's account and offered instead to issue a letter of credit in favour of the Claimant for the value of the second post-dated cheque. The Claimant affirmed that it has subsequently received the full value of this second post-dated cheque.

10.4.17 This information was borne out by Mr. Pascal Maygnan, the Claimant's Finance Manager, who testified at Day 2 of the Hearing, conducted on 18th November 2014, as follows:[131]

"*Mr. Allison:* *Let's talk about the second cheque. When was the second cheque due to be presented?*

Mr. Maygnan: *The second cheque was due to be presented on January 31st, 2013.*

Mr. Allison: *What happened with respect to the second cheque?*

Mr. Maygnan: *A few days before we had to present the cheque to the bank, Mr. Al-Badie reached out to Mr. White and myself by visiting our booth at a trade show in Dubai and specifically asked that we do not present the cheque to the bank, and that he would arrange for a letter of credit to be issued to Cerner instead.*

Mr. Allison: *I just want to make sure we are clear. You mentioned Mr. Al-Badie. Is that Mr. Al-Dahari who we refer to him as Respondent No. 2 in this arbitration?*

Mr. Maygnan: *Yes, it's Mr. Al-Dahari.*

Mr. Allison: *And so Mr. Al-Dahari personally came to a booth at a trade show that you and Mr. White were representing Cerner?*

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[131] See Witness Statement of Mr. Pascal Maygnan, paragraph 19. Also see Transcript, Day Two, pages 241 to 242.

Mr. Maygnan: ***Yes.***

Mr. Allison: ***Did Cerner ultimately accept a letter of credit for the amount of 14.825 million Dirham for post-dated cheque number 2?***

Mr. Maygnan: ***Yes, we accepted that letter of credit.***

Mr. Allison: ***And when was that letter of credit provided?***

Mr. Maygnan: ***It was provided in the early days of February 2013 and it was cashed on February 19^th^ of that year.***"

10.4.18 The Tribunal notes that in spite of the Claimant's confirmation that the letter of credit issued in its favour in lieu of the second post-dated cheque was cashed, and that it has received its full amount, the Claimant nevertheless contended that "***the failure of the second cheque to clear on January 31, 2013 was a breach of the SPA***", which triggered the acceleration clause contained therein.[132] As a result thereof, the Claimant submitted that on 6th February and 29th June 2013, it issued invoices to Respondent No. 1 for the amounts equal to the remaining post-dated cheques.[133]

10.4.19 Under direct examination by the Claimant's Counsel on Day 2 of the Hearing, Mr. Pascal Maygnan testified as follows:[134]

"***Mr. Allison:*** ***And was the failure of the post-dated cheque to clear as of January 31st, 2013 a breach of the terms of the SPA?***

Mr. Maygnan: ***Yes, it was.***

Mr. Allison: ***And so did Cerner consider the acceleration clause of the SPA to have been triggered as a result of the change in payment form?***

Mr. Maygnan: ***Yes, we did.***

Mr. Allison: ***As a result of that acceleration, what did you instruct your finance team to do?***

Mr. Maygnan: ***I instructed my team to issue all the invoices for those post-dated cheques and to submit them to iCapital.***

Mr. Allison: ***And did your team do that?***

Mr. Maygnan: ***Yes, we did that.***"

10.4.20 A plain reading of the relevant Article contained in the SPA, namely Article 4, entitled "***Acceleration of Payments***", quoted at paragraph 10.4.12 above, clearly shows that acceleration is triggered "***in the event any payment owed pursuant to this Agreement is not honoured when presented for payment …***". Based on the evidence adduced by the Claimant, and the written and oral testimony of its Financial Manager, Mr. Pascal Maygnan, the Tribunal rejects the Claimant's contention that an event of default occurred due to the "***failure of the second cheque to clear on 31st January 2013***". The Tribunal finds that no default occurred in relation to the second post-dated cheque for the simple

[132] See Witness Statement of Mr. Pascal Maygnan, paragraph 20. Also, see Transcript, Day Two, page 243, lines 13 & 14.
[133] See Hearing Bundle, Tab nos. C-20.001 to C-20.012. The invoice dated 29th June 2013 was a rectification of the initial invoice dated 6th February 2013, which, due to a clerical error, omitted the value of post-dated cheque no. 7 for the amount of AED15,666,666.20.
[134] See Transcript, Day Two, pages 244 & 245.

reason that it was not presented for payment by the Claimant who accepted Respondent No. 2's proposal that Respondent No. 1 issued a letter of credit in its favour instead.

10.4.21 Accordingly, and contrary to the Claimant's assertions, the Tribunal finds that no breach of the SPA by the Respondents had occurred by 31st January 2013, the due date of the second post-dated cheque, and consequently no right of acceleration or right to claim interest on the Unpaid Overdue Amounts accrued to the Claimant at that point in time. Accordingly, it is clear to the Tribunal that upon receiving the value of the first two post-dated cheques, namely AED9,175,000.00 and AED14,825,000.00, i.e. a total of AED24,000,000.00, the remaining balance of the Unpaid Overdue Amount owed to the Claimant dropped from AED118,722,098.20 to AED94,722,098.20.

10.4.22 In respect of the third post-dated cheque in the amount of AED34,750,490.37, the Claimant submitted that this cheque was presented for payment on its due date of 25th April 2013 and that it did not clear.[135]

10.4.23 The Claimant further submitted that in partial satisfaction of this third post-dated cheque, on 16th June 2013 Respondent No. 1 made a payment of AED17,000,000.00 to the Claimant and on 26th December 2013, a further payment of AED3,680,000.00 was made to the Claimant i.e. a total of AED20,680,000.00, leaving an unpaid balance of AED14,070,490.37 of the value of the third post-dated cheque.[136]

10.4.24 In this regard, the Tribunal refers to the oral testimony of Mr. Pascal Maygnan on Day 2 of the Hearing conducted on 18th November 2014. Under direct examination, Mr. Maygnan testified as follows:[137]

"*Mr. Allison:* *Let's talk about the third post-dated cheque now.*

Mr. Maygnan: *Yes.*

Mr. Allison: *On April 25, 2013, a cheque for 34.7 million Dirham was supposed to be presented to Union National Bank or on the account of iCapital at Union National Bank. What happened with respect to that cheque?*

Mr. Maygnan: *So that cheque was presented and bounced. So we immediately started discussion with iCapital, to inform them about that episode and ask them to remedy that immediately.*

Mr. Allison: *And what did they say?*

Mr. Maygnan: *So they initially asked for some extra time in order to be able to make the payments. So again we had to talk to our executives in Kansas City, to get their approval to have that discussion with iCapital. And so after the course of a few weeks, we agreed that they could do wire transfers to us, but that we wanted payments before the end of June for the entire amount of 34 million Dirhams.*

Mr. Allison: *The 34 million Dirham was by far the largest amount of the post-dated cheques. Correct?*

Mr. Maygnan: *Yes, it's correct.*

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[135] See Witness Statement of Mr. Pascal Maygnan, paragraph 21.
[136] See Witness Statement of Mr. Pascal Maygnan, paragraph 22.
[137] See Transcripts, Day Two, pages 246 to 248.

Mr. Allison: ***And it was the third post-dated cheque's clearance that triggered some of the waivers that Cerner was willing to offer as part of the settlement if that cheque had cleared. Correct?***

Mr. Maygnan: ***It's correct.***

Mr. Allison: ***And it did not clear?***

Mr. Maygnan: ***It did not clear.***

Mr. Allison: ***Cerner ultimately granted some extensions of time to iCapital to make the payment?***

Mr. Maygnan: ***Yes, we did.***

Mr. Allison: ***Did they ever make full payment of the third post-dated cheque?***

Mr. Maygnan: ***No, they never made full payment.***

Mr. Allison: ***Let's talk about what payments they did make. Have any payments been made against the 34.7 million Dirham amount for the third post-dated cheque?***

Mr. Maygnan: ***So there were two payments made for that -- towards that amount. The first payment was made in June 2013 for 17 million Dirhams, so about 50 percent of the amount due. And then in December 2013, there was an additional payment of about 3.7 million Dirhams that was made. So a total of about almost 21 million Dirhams has been paid towards that amount of 34.***"

10.4.25 The Claimant asserted that no further payments were made by either of the Respondents since the last payment dated 26th December 2013, and accordingly, the Claimant is claiming the balance of the third post-dated cheque, in addition to the amounts of the four remaining post-dated cheques.[138]

10.4.26 As stated at paragraph 10.2.1 above, no evidence was submitted by either of the two Respondents to refute the Claimant's assertions and contentions in respect of the Overdue Amounts. The Tribunal, having considered the evidence before it, accepts that the bouncing of the third post-dated cheque constituted an event of default under the terms of the SPA and as such, triggered an "***Acceleration of Payments***", in accordance with Article 4 of the SPA and further triggered the revocation of the Claimant's waiver to the "***Accrued Interest Amount***", pursuant to Article 3.3 of Amendment No. 5 of the CBA.[139] It is therefore clear that following the bouncing of the third post-dated cheque dated 25th April 2013, the Claimant became immediately entitled to (1) the remaining balance of the third post-dated cheque of AED14,070,490.37; (2) the full amount of all the remaining four post-dated cheques; and (3) the Accrued Interest Amount of AED28,684,772.00.[140]

10.4.27 However, the Tribunal curiously notes that despite the Claimant's assertions that its right to acceleration of payments was triggered three months earlier with the "***bouncing***" of the second post-dated cheque, which the Tribunal has rejected, for the reasons set out

[138] See Witness Statement of Mr. Pascal Maygnan, paragraphs 24 and 25.
[139] Both Articles 4 of the SPA and 3.3 of Amendment No. 5 were quoted in paragraph 9.4.12 and 9.4.13 above, respectively.
[140] The Accrued Interest Amount is dealt with in section 9.5 below.

within in paragraphs 10.4.19 and 10.4.20 above, the Claimant did not avail itself of this right, even after the bouncing of the third post-dated cheque, which was a clear event of default on the part of the Respondents, as stated at paragraph 10.4.26 above, and continued to present the remaining cheques on their respective due dates. When questioned by the Tribunal on whether or not the Claimant availed itself of its right to acceleration of payments, Mr. Maygnan responded as follows:[141]

"**Tribunal:** ***Mr. Maygnan, you testified, in reply to a question by Mr. Allison, that after the third post-dated cheque bounced, you continued to present the cheques on the respective due dates.***

Mr. Maygnan: ***Yes, we did.***

Tribunal: ***As set out in Schedule A of the SPA, which is tab 14, 007. If we go to 14.003, paragraph 4, Acceleration of Payments. Do you believe that you are entitled to submit the remaining 4 cheques all together, since the payments were accelerated? I mean, does SPA allow you to submit?***

Mr. Maygnan: ***I guess we could have done that, but instead, for each cheque, we contacted iCapital, like, 2 or 3 weeks before presenting the cheque, letting them know that we would present the cheque, for instance, number 5. So we were letting them know that we would continue doing that and we presented the cheques at the dates that were agreed on in 2012.***

Tribunal: ***You didn't make use of this acceleration clause?***

Mr. Maygnan: ***We did make use of it insofar as we issued all the invoices at once. So they all they all became due basically. But then we still continued to present the cheques at the dates that had been agreed on in 2012.***

Tribunal: ***Thank you.***

Mr. Allison: ***Just a follow-up on that. You were under no obligation under the contract to continue to present those cheques because the acceleration clause had made all of those payments immediately due. Correct?***

Mr. Maygnan: ***Exactly.***

Mr. Allison: ***But you chose to do so in any event that there may be funds in the bank for any one of those cheques. Correct?***

Mr. Maygnan: ***That's correct.***"

10.4.28 Having considered and examined the evidence adduced by the Claimant under this head of claim, the Tribunal finds that with the bouncing of the third post-dated cheque dated 25th April 2013, the Respondents were in breach of the terms of the SPA. Pursuant to the SPA and Amendment No. 5 of the CBA, this event of breach triggers the Acceleration of Payments and the Claimant's entitlement to revoke their erstwhile waiver of the Accrued Interest Amount. Moreover, the Tribunal is of the opinion that whether the Claimant took advantage of the "***Acceleration of Payments***" Clause or not, and the adduced evidence shows that it did not, has no bearing on the Tribunal's determination of this Issue.

[141] See Transcript, Day Two, pages 270 to 272.

10.4.29 The Tribunal finds that upon the signing of the SPA, Respondent No. 1 issued seven post-dated cheques with a total value of AED118,722,098.20. In return for these cheques, which amount to an acknowledgment and confirmation on the part of Respondent No. 1 of the Claimant's entitlement to that amount, and subject to each one of the first three cheques clearing on its respective due date, the Claimant agreed to waive its right to the unpaid accrued overdue interest.

10.4.30 The value of the first two post-dated cheques was duly received by the Claimant. However, the third post-dated cheque bounced when presented for payment by the Claimant. While the Claimant has received partial payment of this cheque, the Tribunal finds that when the third post-dated cheque failed to clear, there was a breach of the terms of the SPA. This breach entitles the Claimant to the value of the remaining four post-dated cheques.

10.4.31 A simple calculation of the amounts paid by the Respondents following the signing of the SPA to date shows that the total amounts paid were AED9,175,000.00[142] plus AED14,825,000.00[143] plus AED20,680,000.00[144], i.e. a total of AED44,680,000.00. When this amount is deducted from the agreed Unpaid Overdue Amount of AED118,722,098.20, as per the SPA, the remaining outstanding / unpaid balance is AED74,042,098.20. This is the amount claimed by the Claimant under this head of claim.

10.4.32 However, as pointed out at paragraph 6.1.15 above, the Claimant in its Statement of Case did accept that it had "***initiated a proceeding in the UAE against iCapital specifically with respect of the third post-dated check (sic) provided by iCapital. The proceeding was brought pursuant to specific UAE statute that provides a judicial, quasi-criminal remedy in favor (sic) of recipients of bad post-dated checks (sic). The remaining amount due for this single check is the only amount in issue in any adjudicative proceeding other than this arbitration. On May 27, 2004 (sic) Cerner received a judgment from the trial court against iCapital in the amount of 14.07 million AED.***" The date of 27th May 2004 should obviously have been 27th May 2014 and the precise amount of the figure in the quoted text above should be taken from Exhibit C-41, as being AED14,070,490.37, which relates only to the third post-dated cheque. In respect of the interest sought by the Claimant on this figure, reference is made to paragraph 10.7.7 below.

10.4.33 Therefore, the Tribunal determines that the Claimant is entitled to be paid the sum of AED74,042,098.20, less the sum of AED14,070,490.37 as the balance owing from the third post-dated cheque, which is equal to **AED59,971,607.83**.

10.5 CLAIMED UNPAID ACCRUED OVERDUE INTEREST – AED28,684,772.00

10.5.1 Having examined the matters relating to the Claimant's claim for Unpaid Overdue Amounts, and having determined:

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[142] This is the value of the first post-dated cheque.
[143] This is the value of the letter of credit which was opened by Respondent No. 1 in lieu of the second post-dated cheque.
[144] This is the total sum of the two payments made by Respondent No. 1 in partial satisfaction of the third post-dated cheque.

i. the Respondents breached the terms of the SPA when they failed to honour the third post-dated cheque in the amount of AED34,750,490.37, which was presented for payment by the Claimant on its due date of 25th April 2013,

ii. as a result of this breach on the part of the Respondents, the Claimant is entitled to the remedy provided for in Article 4 of the SPA, namely, acceleration of payments whereby all remaining post-dated cheques shall be accelerated and shall become immediately due and payable in full,

the Tribunal now turns to determine whether the Claimant is entitled to the Unpaid Accrued Overdue Interest in the amount of AED28,684,772 it is claiming.

10.5.2 In this section, the Tribunal will address and determine the issue of Unpaid Accrued Overdue Interest solely, and will not deal with the Additional Interest claimed by the Claimant with respect to Future and Deferred Payments, which is dealt with in section 10.7 below.

10.5.3 The Tribunal notes that the Claimant had submitted in its Request for Arbitration that the accrued interest on the Unpaid Overdue Amount due to it is AED28,684,772.00, and that in accordance with the terms of the SPA "***if iCaptal breaches its payment promise before full payment of the first three payments called for in the Schedule,***[145] ***that an agreed amount of Accrued Interest (AED 28,684,772) will become immediately payable in addition to the entire Overdue Amount***".[146]

10.5.4 The Tribunal further notes that in its Statement of Case, the Claimant submitted that the SPA "***provides that if iCapital breaches this payment promise before the first three post-dated checks (sic) fully clear, an agreed amount of Accrued Interest (AED 28,684,772) will become immediately payable in addition to the entire Overdue Amount***".[147]

10.5.5 In the written witness statement submitted by the Claimant's witness, Mr. Pascal Maygnan, the Claimant's Finance Manager for the Middle East, and in the course of identifying the main features of the SPA, Mr. Maygnan stated that:
"***Broadly speaking, the SPA was intended to define and address Overdue Amounts that iCapital explicitly acknowledged were due and owing for recognized and accepted Cerner performance to date ... Amendment No. 5 also defined agreed Accrued Interest Amount that was due on the unpaid overdue amount as of the settlement date, but that Cerner was willing to waive if iCapital meet certain performance criteria***".[148]

10.5.6 Furthermore, under the heading "***Accrued Interest on Overdue Amount***", Mr. Maygnan stated that as part of the settlement, "***Cerner agreed to forever waive such interest amount in the event that the first three post-dated checks provided by iCapital cleared and posted to Cerner's account***".[149] However, Mr. Maygnan gave evidence that "***because the first three post-dated checks did not clear, the Accrued Interest Amount of AED 28,684,772 accelerated under the SPA and is now due and payable. Cerner seeks the full amount of that agreed Accrued Interest as part of this proceeding***".[150]

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[145] Schedule A to the SPA.
[146] See Claimant's Request for Arbitration, page 8, paragraph 27, first bullet point; & Exhibit C-01 of the Hearing Bundle.
[147] See Claimant's Statement of Case, paragraph 40; & Exhibit C-09 of the Hearing Bundle.
[148] See Witness Statement of Mr. Pascal Maygnan, paragraph 10.
[149] See Witness Statement of Mr. Pascal Maygnan, paragraph 26.
[150] See Witness Statement of Mr. Pascal Maygnan, paragraphs 26 and 27.

10.5.7 Furthermore, at the Hearing conducted on 17th and 18th November 2014, the Claimant made an Opening Statement in which it summarised its position in relation to the Unpaid Accrued Overdue Interest as follows:[151]

"*Mr. Allison:* *Affirming that Cerner performance and affirming the enforceability of the SPA, iCapital provided to Cerner a series of post-dated cheques to pay that overdue amount and expressly represented that there would be funds in iCapital's bank account on the dates when those cheques were to be presented. iCapital also agreed that there was interest already due on the overdue amount and they expressly defined that interest amount as 28.6 million Dirhams.*

Now, Cerner was willing to waive that already accrued interest, but only if iCapital -- the first 3 post-dated cheques that iCapital had provided cleared on the dates when they were to be scheduled for presentation.

In turn, iCapital agreed that if the first 3 post-dated cheques did not clear as scheduled, they would owe that accrued interest amount immediately.

So what happened? The first post-dated cheque was presented as scheduled and it cleared. But the second cheque did not clear. That triggered the acceleration clause under the SPA, which made all of the overdue amount immediately due and also made the agreed interest amount immediately due and owing. Those amounts had been due and owing since February 2013.

iCapital has now made a small additional series of payments to offset the overdue amount, but more than 74 million Dirhams remain unpaid of the original 118 (million) Dirhams that were agreed as the overdue payment amount. Additionally, the 28.6 million Dirhams in agreed interest are overdue."

10.5.8 Furthermore, the Claimant's other witness, Mr. Feras Gadamsi, the Claimant's corporate counsel at the time the SPA and Amendment No. 5 of the CBA were entered into, testified as follows:[152]

"*Mr. Olson:* *If I could turn your attention, Mr. Gadamsi, to paragraph 4, please. Do you see that paragraph?*

Mr. Gadamsi: *Yes.*

Mr. Olson: *What is it entitled?*

Mr. Gadamsi: *Acceleration of Payments.*

Mr. Olson: *You mentioned the form of payment being through post-dated cheques. What does this paragraph provide in the event that any of iCapital's cheques failed to clear?*

Mr. Gadamsi: *That the payment should be accelerated on all of the cheques.*

Mr. Olson: *And is there also agreed interest in this provision?*

Mr. Gadamsi: *Yes.*

[151] See Transcript, Day One, pages 13 & 14.
[152] See Transcript, Day Two, pages 175 & 176.

Mr. Olson: *And are you familiar with the amount of interest that iCapital agreed was owing in the event these cheques didn't clear?*

Mr. Gadamsi: *Yes.*

Mr. Olson: *What was that amount?*

Mr. Gadamsi: *Roughly 28.7 million Dirhams, plus any further accrued interest*".

10.5.9 Furthermore, Mr. Pascal Maygnan, the Claimant's Finance Manager for the Middle East testified as follows:[153]

"*Mr. Allison:* *And we will get to that. But with respect to interest, are there two types of interest that are in dispute here?*

Mr. Maygnan: *There was a portion of interest that was from the past and that we said in the agreement that we would waive if iCap would perform against their promise to pay. And then there is a second amount of interest that we are calculating on wholly currently outstanding invoices.*

Mr. Allison: *The first bucket I think you identified was the overdue amount. Is that the amount that is identified in the SPA?*

Mr. Maygnan: *Yes, that's the amount there.*

Mr. Allison: *And the Tribunal has seen that amount defined on the first page of the SPA. How much is that, roughly?*

Mr. Maygnan: *The amount is about 118 million Dirhams.*

Mr. Allison: *And that was an amount that iCapital agreed was due for performance that had already occurred. Correct?*

Mr. Maygnan: *Exactly.*

Mr. Allison: *And that agreement was the subject of the negotiation you testified to earlier with Mr. Al-Deeb and Mr. Elhendi. Correct?*

Mr. Maygnan: *Exactly.*

Mr. Allison: *Now, how was that overdue amount to be paid?*

Mr. Maygnan: *So that overdue amount was to be paid with 7 cheques that iCapital gave to us when we executed the SPA.*

Mr. Allison: *Okay, I'd like to put up the SPA, specifically page 7 of the SPA. You should have a copy of the book there so that you don't need to continue to turn around ...*

Tribunal: *I do have a question on interest. The interest that was waived by Cerner concerns the overdue amount and the deferred amount that was subject to –*

Mr. Maygnan: *So the interest that we would have waived if iCap had been current on that payment was with regard to the overdue amount.*

Tribunal: *The 118 million, not the deferred?*

Mr. Maygnan: *Not the deferred.*

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[153] See Transcript, Day Two, pages 230 to 232.

Tribunal: *Okay, thank you."*

10.5.10 Having examined the two documents signed by the Claimant and Respondent No. 1 on 29th December 2012, namely the SPA and Amendment No. 5 of the CBA, the Tribunal notes that the relevant Articles in the two documents are Article 4 of the SPA and Article 3.3 of the Amendment. While both Articles were quoted above, the Tribunal deems that their reproduction here is in order.

10.5.11 Article 4 of the SPA stipulates as follows:

> ***"... in the event any payment owed pursuant to this Agreement is not honoured when presented for payment in accordance with Schedule A (Payment Schedule) or does not otherwise post in Cerner's account as clearing in accordance herewith, the full amount of that payment and all remaining payments under this Agreement, in addition to the Effective Date Accrued Interest Amount (as such term is defined under the Amendment) shall be accelerated and shall become immediately due and payable in full*"**.

10.5.12 Article 3.3 of Amendment No. 5 of the CBA provides:

> ***"The Client acknowledges that interest in accordance with Section 7.1(F) (General) of the CBA has accrued for late payments owed to Cerner by the Client in the amount of AED 28,684,772 as of October 31, 2012 (such amount, the "Accrued Interest Amount"). Cerner agrees to waive its right to the Accrued Interest Amount the Effective Date (with no chance of revival) in its entirety upon the fulfilment of all conditions precedent required to effectuate this Amendment and the clearance of post-dated cheque nos. 1, 2, and 3"***.

10.5.13 A careful reading of these two contract provisions reveals that a single event of default has two different effects, depending on when such a default takes place. Article 4 of the SPA stipulates that if any payment owed pursuant to the SPA is not honoured when presented for payment, the full amount of that payment and all remaining payments due under the SPA shall be accelerated and shall become immediately due and payable in full. Put differently, pursuant to the SPA, any default in payment, irrespective of when this default takes place, triggers the acceleration of payments. However, in accordance with the provisions of Article 3.3 of Amendment No. 5 of the CBA, the remedy available to the Claimant, i.e. the revocation of its waiver of its entitlement to the Accrued Overdue Interest, is contingent upon this default occurring in connection with the first three payments. Again, put differently, if the first three cheques cleared and any of the remaining four cheques bounced, the Claimant would not be entitled to the Accrued Overdue Interest Amount of AED28,684,772.00.

10.5.14 It is clear to the Tribunal that a breach by Respondent No. 1of the defined payment promises set forth in both the SPA and in Amendment No. 5 of the CBA, entitles the Claimant to the double remedy of not only claiming the principal Overdue Amount, but also the Accrued Overdue Interest.

10.5.15 Having determined within section 10.4 above that Respondent No. 1 has breached the defined payment obligations set out in Schedule A of the SPA, by defaulting on paying the amount of the third post-dated cheque, which had the effect of accelerating all remaining payments, the Tribunal determines that this constituted a cross-default of

Article 3.3 of Amendment No. 5 of the CBA, which entitles the Claimant to the Accrued Overdue Interest Amount of **AED28,684,772.00** it had hitherto waived.

10.5.16 Of course, the Tribunal must bear in mind that the Accrued Overdue Interest Amount of AED28,684,772.00 owing pursuant to Section 3.3 of Amendment No. 5 to the CBA only deals with interest that had accrued up to 31st October 2012. The Claimant has also claimed and is entitled to interest on all sums that remained due to it following the Respondents' breach of the terms of the SPA on 25th April 2013, as per the Tribunal's determination within paragraph 10.4.28 above. This claim is dealt with within Section 10.7 below.

10.5.17 On the basis of the above, the Tribunal hereby determines that the Claimant is entitled to be paid the sum of AED28,684,772.00 in respect of Unpaid Accrued Overdue Interest it had conditionally waived subject to the Respondents honouring the first three payments, which the Respondents failed to do as was shown above.

10.6 UNPAID DEFERRED AND FUTURE PAYMENTS – AED95,115,289.00

10.6.1 The Claimant also relied on the terms of the SPA to support its claim that not only were overdue amounts to be paid to it by the Respondents, but also amounts that, under the terms of the CBA, would become due and owing. These were defined amounts that the Claimant was to invoice to Respondent No. 1 in the 18 months following the date of the SPA and were set out within the Exhibits to Amendment No. 5 of the CBA[154].

10.6.2 The Claimant's Witness, Mr. Gadamsi[155], made reference to these Exhibits within his Witness Statement pointing out that the dates that each of the deferred and future payments were to be invoiced and paid, together with a description of the services performed in respect thereof was clearly identified therein.

10.6.3 Mr. Massey, the Claimant's Client Results Executive, also discussed the Deferred and Future Amounts within his Witness Statement, explaining that the sum of AED112.3 million that the Claimant was seeking in its Statement of Case was split between Deferred Payments (AED43.3 million) and Future Payments (AED69 million), as set out in Table 7.4.11 above. **Deferred Payments**, Mr. Massey stated, covered two categories of CBA services, namely the Claimant's professional services that had not been performed when originally scheduled due to the lack of iCapital performance that would allow for such performance by the Claimant, and the Claimant's software support services, which had been performed, but not invoiced prior to the SPA, by mutual agreement between the Parties. Therefore, Mr. Massey testified that these payments were amounts due for past performance by the Claimant for which the Claimant was willing to defer payment from Respondent No. 1, and was willing to issue new invoices to Respondent No. 1 pursuant to the schedule attached to Amendment No. 5 of the CBA.

10.6.4 In respect of the **Future Payments**, these were explained by Mr. Massey as the creation of a detailed framework for the continuation of the Wareed Programme centering around the future performance by the Claimant and future payments by Respondent No. 1.

[154] See Exhibits A, A.1 and B attached to Amendment No. 5 to the CBA.
[155] Corporate Counsel for the Claimant at the relevant time.

Amendment No. 5 of the CBA defined these Payment amounts and scheduled when they would be invoiced or when they were expected to be invoiced.

10.6.5 As the Claimant's Client Results Executive, Mr. Massey provided extensive evidence surrounding the services that were provided regarding the deferred and future payments, as already indicated within paragraphs 10.6.3 & 10.6.4 above. Such was the extent of the evidence and information provided to the Tribunal that Mr. Massey's evidence consumed the entirety of Day 1 of the Hearing.

10.6.6 As stated at paragraphs 10.1.3 and 10.1.4 above, the Respondents were afforded ample opportunities of putting any defence(s), together with supporting evidence that each may have had before the Tribunal but chose not to do so. The only indication of any defence that *may* have been put forward by Respondent No. 1 came from its Answer to the Request for Arbitration, which was filed on 30th September 2013. In that document, Respondent No. 1 denied that it bore any liability in respect of the Claimant's claims, submitting that the Claimant had made no genuine claims since Respondent No. 1 had complied with the terms of SPA. The Claimant alluded to this potential defence when it questioned Mr. Massey on Day 1 of the Hearing in the following terms[156]:

"***Mr. Allison:*** ***And again, to confirm, in the period between October 31st, 2012, which is the agreed settlement date, and the date of the termination of the CBA, did you ever receive any written or oral notifications from iCapital that Cerner had breached any of its obligations with respect to the future or deferred payments?***

Mr. Maygnan: ***No, none at all.***"

10.6.7 Respondent No. 1 placed no proof before the Tribunal of this allegation and to the contrary, from the evidence that the Tribunal has heard and the documentary proof seen, the Tribunal must reject such a contention. Accordingly, there is no doubt but that the Respondents were satisfied with the Claimant's performance under the terms of the CBA.

10.6.8 Mr. Maygnan, the Claimant's Finance Manager also discussed the Deferred Payments and Future Payments in detail, pointing out that specifically, there were four deferred payments relating to amounts that should have already been invoiced pursuant to the original CBA payment schedule but which had not been invoiced at the time of the SPA[157] and five future payments relating to future AMS, OMS, Subscriptions, and Licensed Software Support services that were called for under the CBA. Mr. Maygnan added that Amendment No. 5 of the CBA defined the dates upon which those Future Payments would be invoiced and when they would be due, pointing out that the Claimant had continued to fully perform all of these services under the CBA since the execution of the SPA and Amendment 5 to the CBA, and as such, in accordance with Amendment No. 5 of the CBA, it had issued invoices for Future Payments Nos. 1 - 4, and for Deferred Payments Nos. 1 and 3. Mr. Maygnan added that the Claimant would issue invoices in respect of agreed Future Payment No. 5 and Deferred Payment No. 4 in the sum of AED17,538,201.00 on 15th June 2014, which would become due and payable on 15th July 2014, in accordance with the terms of Amendment No. 5 of the CBA. In accordance with the terms of Amendment No. 5 of the CBA, Mr. Maygnan pointed out that the Claimant had not issued an invoice for Deferred Payment No. 3[158].

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[156] See Transcript, Day One, page 116, lines 1 to 8. This was also confirmed by Mr. Massey earlier, see Transcript, Day One, page 107, lines 17 to 21.

[157] Two of these Deferred Payments (No. 1 and No. 3) concerned Professional Services, and it had been agreed between the Parties that these payments would be invoiced when certain implementation milestones had been reached. The other two Deferred Payments (No. 2 and No. 4) concerned Licensed Software Support for years 3 and 4 of the CBA that were originally due in September 2011 and September 2012 respectively, but were agreed to be invoiced on specific dates as newly scheduled in Amendment No. 5.

10.6.9 All of the outstanding invoices associated with the Deferred and Future Payments were provided to the Tribunal within Appendix A of Mr. Maygnan's Witness Statement. At the time of the Hearing in this case, the total amount claimed by the Claimant in respect of Unpaid Deferred and Future Payments was in the sum of AED95,115,289.00.

10.6.10 Under the terms of the SPA and Amendment No. 5 of the CBA, it is clear that the Respondents (the Tribunal intentionally refers to both Respondents here since it is satisfied that Respondent No. 2 was at all material times involved in the negotiation and the terms entered into between the Parties pursuant to the SPA and Amendment No. 5 of the CBA), acknowledged and confirmed that it had paid for, or indeed had acknowledged and confirmed, in respect of the Deferred Amounts, that payment was due for certain items. Mr. Maygnan was questioned by the Tribunal on why payments that the Claimant asserted were due and owing to it by the Respondents were deferred, to which Mr. Maygnan explained that this was done by the Claimant in an effort to "***help the client. So we were putting the payments back to match their cash inflow from the Ministry***."[159] When asked to elaborate on this issue by the Tribunal, Mr. Massey explained that it would not have been to the Claimant's benefit for the contract between Respondent No. 1 and the MOH to have been terminated, and as such, the Claimant did everything that it could to assist the Respondents with the continuation of the Wareed Programme.[160]

10.6.11 The Tribunal is in no doubt that the Claimant continued to perform under the terms of the SPA and Amendment No. 5 of the CBA. Mr. Massey provided evidence to the Tribunal that the Claimant had continued to roll out the clinics and to provide support services for the software, for the applications and for the production systems relating to the Wareed Programme. In fact, Mr. Massey gave evidence, that in the year following execution of the SPA and Amendment No. 5 of the CBA, 23 clinics were rolled out.[161] The Claimant accepted that there were 68 clinics that were contemplated originally by the Parties upon entering into the CBA but that only 29 clinics had been completed[162]. When questioned as to why this was the case, a very clear explanation of this was given by Mr. Massey on Day 1 of the Hearing, where he explained that there were certain things that were incumbent on Respondent No. 1 to do prior to the Claimant being in a position to complete its work. For example, Respondent No. 1 was to put hardware into the clinics but they failed to do so[163]. Another example given the local telecom supplier had not yet provided the wide area network that connected everything and as such, the Claimant was not in a position to fulfil its contractual obligations regarding that facility. The Tribunal

[158] See Transcript, Day One, pages 82 & 83. Mr. Massey's evidence on Day One of the Hearing was that Deferred Payment No. 3 was not being pursued because it only becomes due on completion of the entire project. Since a Notice of Termination had been issued, Deferred Payment No. 3 is not due and owing.
[159] See Transcript, Day One, page 116, lines 21 to 23.
[160] See Transcript, Day One, pages 116 to 118.
[161] See Transcript, Day One, page 73.
[162] See Transcript, Day One, pages 73 to 76.
[163] Hardware meaning computers, printers, specialist printers for the system together with the active and passive networking.

accepts Mr. Massey's evidence that this was the case and indeed, such evidence remained uncontested, and as such, the Tribunal has no reason to doubt it.

10.6.12 On the basis of the above, the Tribunal determines that the Claimant is entitled to be paid the sum of **AED95,115,289.00** in respect of Deferred and Future Amounts that were acknowledged under the SPA as being due to it or that would become due and owing to it.

10.7 UNPAID POST-SETTLEMENT INTEREST - AED20,928,387.00

10.7.1 At paragraph 29(e) of its Request for Arbitration, the Claimant listed this head of claim amongst its five heads of claim.[164] Further, along with its Statement of Case, the Claimant attached the Witness Statement of Mr. Pascal Maygnan, the Claimant's Middle East Finance Manager, in which he listed "***Post-Settlement Interest on Payment Breached***" as one of the Claimant's claims in these proceedings.[165] Mr. Maygnan stated that pursuant to Section 7.1(F) of the CBA, the Claimant is entitled to interest on all amounts that are past due at a rate of 1.5% per month. As of the date of the Claimant's Statement of Case, this amount was calculated at AED13,211,318.00.[166]

10.7.2 As to the amount claimed under this heading, paragraphs 3.1.12, 3.2.9, 3.5.3 and 3.5.6 above set out the interest sought by the Claimant in its Request for Arbitration and the Response to Respondent No.1's Answer in general terms. In these submissions, the Claimant added that it intended to provide evidence of the amounts due in its later submissions. This evidence is referred to in section 7 above, specifically by Mr. Maygnan who referred to Post-Settlement Interest, as explained in paragraphs 7.5.6, 7.5.15, 7.5.17, 7.6.3, 9.1.14 and 9.1.15 above. Finally, in its Post-Hearing submission, the Claimant sought payment of the sum of **AED20,928,387.00** in respect of interest that it claimed was due, at the rate of 9% per annum, on amounts due and owing to the Claimant pursuant to the terms of the CBA[167]. This included interest on the Unpaid Overdue Amounts that have been dealt with in section 10.4 above, following the Respondents' breach of the terms of the SPA on 25th April 2015. In Exhibit C-41 of its Post-Hearing Submission, the Claimant presented in the form of a table, its calculations in respect of the interest it submitted that it was entitled to, and further stated that this sum would continue to grow at **AED42,289.35** per day from 9th December 2014, to the date upon which a Final Award is entered. The Claimant accordingly sought interest up to the date of the Final Award.[168]

10.7.3 As stated at paragraph 10.7.1 above, the basis for the Claimant's claim for Unpaid Post-Settlement Interest is Section 7.1(F) of the terms of the CBA, which the Claimant has argued, allows for interest to be recovered at the lesser of 1.5% per month or the maximum permissible rate. Section 7.1(F) of the CBA states as follows:

[164] See page 10 of the Claimant's Request for Arbitration filed on 23rd August 2013, and referred to in paragraph 3.1.12 above.
[165] See paragraph 11 of Mr. Maygnan's Witness Statement.
[166] See paragraphs 39 and 41 of Mr. Maygnan's Witness Statement.
[167] As of the date of the Hearing, the Claimant was seeking payment of AED18,010,422.00 in respect of unpaid Post-Settlement Interest, but this was recalculated within the Claimant's Post-Hearing Submission.
[168] Post-Settlement Interest, but this was recalculated within the Claimant's Post-Hearing Submission.
[168] See footnote number 13 on page 25 of the Claimant's Post-Hearing Submissions.

"*General. Client will pay all invoices within thirty (30) days following their receipt by Client. Client will also pay a finance charge on all undisputed amounts that are more than forty-five (45) days past due at a rate of interest equal to the less of one and one-half percent (1.5%) per month or the maximum legal rate. Client will also reimburse Cerner for reasonable collection costs, including attorney's fees, relating to the collection of any such past due amounts. If (1) invoices for professional services fees and/or related expenses are not paid by Client within ninety (90) days of the invoice or (2) Client in in default under its agreement with a third party financing company with whom Cerner has a contractual relationship, Cerner may suspend its performance of such services under applicable Project Agreement(s) according to the relevant terms of Paragraph 4.3 above.*"

10.7.4 It is clear from the provisions of Section 7.1(F) of the CBA quoted above, that interest on all undisputed amounts may be charged "***at a rate ... equal to the less of one and one-half percent (1.5%) per month or the maximum legal rate***" (emphasis added). The '***legal rate***' has to be interpreted in accordance with the Law of the Contract. The Law of the Contract as specified at paragraph 1.5.5 herein is the Law of Missouri, and as such, the Claimant submitted that in accordance with Missouri Revised Statute 408.020, the following is provided:

"***Creditors shall be allowed to receive interest at the rate of nine percent per annum, when no other rate is agreed upon, for all moneys after they become due and payable, on written contracts, and on accounts after they become due and demand of payment is made; for money recovered for the use of another, and retained without the owner's knowledge of the receipt, and for all other money due or to become due for the forbearance of payment whereof an express promise to pay interest has been made.***"

10.7.5 Mr. Maygnan in both his Witness Statement and his Supplemental Witness Statement discussed within section 6 above, claims that the Parties had "***agreed to interest at the rate 18% per year for unpaid invoices***". This calculated amount of interest is as per Section 7.1(F) of the CBA, i.e., 1.5% per month x 12 months = 18%. However, under Missouri Law the maximum amount of interest recoverable is 9%, which is the percentage that was to be applied in the Claimant's Exhibits C-41, referred to in paragraph 10.7.2 above.

10.7.6 Therefore, in accordance with the terms of the CBA, the Tribunal determines that the Claimant is entitled to recover interest on the sums due to it at a rate of 9%, that rate being the lesser of the rates specified and agreed between the Parties in the Contract.

10.7.7 As to the sums due, the Claimant has sought payment of AED20,928,387.00 for Unpaid Post-Settlement Interest, which figure has been calculated and those calculations have been included within the table attached at Exhibit C-41 to its Post-Hearing Submissions. In examining this table, it is clear that the total amount on which interest it calculated is the sum of the "***Unpaid Overdue Amount***" of AED74,042,098.20 and the sum of the "***Unpaid Deferred and Future Payment***" of AED95,115,289.00. These two figures add up to AED169,157,387.20. However, in accordance with the Tribunal's determination at paragraph 10.4.33 above, the sum awarded to the Claimant in respect of the "***Unpaid Overdue Amount***" has been reduced from the figure claimed of AED74,042,098.20 to AED59,971,607.83, i.e. by a figure of AED14,070,490.37, which means a total of AED155,086,896.83 and not AED169,157,387.20. Furthermore, the interest claimed in respect of the figure of AED14,070,490.37 is also dismissed.

10.7.8 A further adjustment to the Claimant's interest calculations will have to be made by the Tribunal taking into account its determination at paragraph 10.4.28 above that it was not until 25th April 2013 that the Respondents could have been in breach of the terms of the SPA, i.e., the date upon which the third post-dated cheque bounced. Accordingly, it is this date that interest should be calculated from, and not the Claimant's asserted date of 6th February 2013 in its table at Exhibit C-41.

10.7.9 It is also to be noted that the Tribunal, upon checking the interest calculations set out in the table included within Claimant's Exhibit C-41, found a number of mistakes, which may be summarised as follows:

(i) The interest rate used by the Claimant in this table was 9.1249989% instead of 9%. This mistake could have been generated by the computer programme used, or some such generic method, since it applied to all the figures in the ninth column of Exhibit C-41, and thus it affected the total sum claimed of AED20,928,387.00, which should now be reduced to AED20,641,714.86.

(ii) The dates upon which the Claimant has calculated interest is incorrect, in that the Claimant has sought interest from the date upon which the respective invoice was issued, and not from the date upon which each respective invoice was due to have been paid.

(iii) The Claimant has failed to fully apply the provisions of Section 7.1(F) of the CBA in that interest thereunder only becomes due and owing on amounts that are "***more than forty five (45) days past due***", whereas the Claimant has calculated interest from the date of the issue of the respective invoice.

10.7.10 Having accounted for the adjustments referred to in paragraphs 10.7.7 and 10.7.8 above; and further, having accounted for the mistakes identified in paragraph 10.7.9 above, the Tribunal determines that the correct sum to be awarded under this heading of "***Unpaid Post-Settlement Interest***" should be further reduced from AED20,641,714.86 by AED4,130,736.08 to **AED16,510,978.78**. Thus, using the correct figures for the sums due; the correct figures for interest; and an interest rate of 9%, the interest sum that would continue to grow on a daily basis is AED38,240.60, based on the balance of the amount due to which interest applies of AED155,086,896.83, instead of that claimed of AED169,157,387.20. These calculations are accurately reflected in Table No. 10.7.10 below, which shows the correct figures for the interest awarded to the Claimant under this head of claim as taken from the corrected Interest Calculations carried out by the Tribunal, as described above:

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7
Item No.	**Invoice No.**	**Date**	**No. of Days**	**Balance to which the interest applies**	**Interest correctly Due AED**	**Interest wrongly calculated by Claimant AED**
1.	100548144	9/6/13	548	19,216,708.47	2,596,624.83	3,223,602.85
2.	100548145	9/6/13	548	9,421,565.96	1,273,072.97	1,580,467.69
3.	100548157	9/6/13	548			
4.	100548158	9/6/13	352	*14,070,490.37		
5.	100548159	9/6/13	548	15,666,667.20	2,116,931.58	2,628,083.42
6.	100565348	9/6/13	549	5,951,662.00	805,675.67	926,971.36
7.	100600364	9/6/13	548	15,666,666.20	2,116,931.44	2,067,999.94
8.	100606232	29/10/13	406	7,864,912.00	787,353.11	945,755.67
9.	100606233	29/10/13	406	16,257,121.00	1,627,493.70	1,954,918.80
10.	100606234	29/10/13	406	5,371,011.00	537,689.70	645,864.07
11.	100628239	1/12/13	373	10,067,322.00	925,917.81	1,127,540.06
12.	100654760	3/2/14	309	2,144,976.00	163,429.54	205,917.70
13.	100654761	3/2/14	309	2,520,573.00	192,046.95	241,975.01
14.	100654762	3/2/14	309	4,493,253.00	342,348,95	431,352.29
15.	100654763	3/2/14	309	1,529,550.00	116,539.14	146,836.80
16.	100663267	2/3/14	282	2,144,976.00	149,149.29	191,439.11
17.	100663268	2/3/14	282	2,520,573.00	175.266.14	224,961.14
18.	100663269	2/3/14	282	4,493,253.00	312,434.96	401,022..83
19.	100663270	2/3/14	282	1,529,550.00	106,356.11	136,512.34
20.	100700361	1/6/14	191	2,144,980.00	101,019.74	142,641.17
21.	100700362	1/6/14	191	2,520,573.00	118,708.63	167,618.10
22.	100700363	1/6/14	191	4,493,253.00	211,613.75	298,801.32
23.	100700364	1/6/14	191	1,529,550.00	72,035.52	101,715.08
24.	100736404	29/8/14	102	1,429,984.00	35,965.08	63,276.79
25.	100736405	29/8/14	102	10,082,292.00	253,576.55	446,141.42
26.	100736406	29/8/14	102	2,520,573.00	63,394.14	111,535.36
27.	100736407	29/8/14	102	2,995,502.00	75,338.93	132,550.96
28.	100738118	29/8/14	102	509,850.00	12,823.08	22,560.86
Total of the Balance to which the Claimant sought Interest after 9th December 2014:				**169,157,387.20**		
Total of the Balance to which the Interest applies after 9th December 2014:				**155,086,896.83**		
Total of the Interest correctly Due in AED:					**16,510,978.78**	

* As can be seen from paragraphs 10.4.32 and 10.4.33, the sum of AED14,070,490.37 has been rejected by the Tribunal. Furthermore, in accordance with paragraph 10.7.7, the Claimant is therefore not entitled to recover interest on this sum.

Table No. 10.7.10 – Corrected Interest Calculations, as awarded to the Claimant

10.7.11 Having examined, analysed and determined the Claimant's four heads of claim, the Tribunal refers specifically to paragraphs 10.4.31 and 10.4.32 above with respect to head of claim no. 1; to paragraphs 10.5.15 and 10.5.16 above with respect of head of claim no. 2; to paragraphs 10.6.11 and 10.6.12 with respect to head of claim no. 3; and to paragraph 10.7.4 above with respect to head of claim no. 4, and deems it appropriate at this point to produce the table below setting out the amounts payable to the Claimant under the four heads of claim, as determined above by the Tribunal, together with the amount of interest per day after 9th December 2014 up to an intermediate point, such as 31st March 2015 prior to the date of the Final Award:

Head of Claim	Appearing in paragraph No.	Amount Awarded in AED
Unpaid Overdue Amount	10.4.33	59,971,607.83
Unpaid Accrued Overdue Interest	10.5.16	28,684,772.00
Unpaid Deferred and Future Payments	10.6.12	95,115,289.00
Unpaid Post-Settlement Interest up to 9th December 2014	10.7.10	16,510,978.78
Unpaid Post-Settlement Interest after 9th December 2014 & up to 31st March 2015	10.7.10	38,240.60 x 112 days = 4,282,947.20
Plus AED38,240.60 per day after 31st March 2015 and untilpayment is made in respect of the Unpaid Post-Settlement Interest	10.7.11	

Table No. 10.7.11 - Amount Awarded in AED for each head of claim

11. ISSUE 5.3 OF THE TERMS OF REFERENCE – BY WHOM, AND IN WHAT PROPORTIONS, ARE THE COSTS OF THE ARBITRATION TO BE BORNE?

11.1 Pursuant to Article 37(4) of the Rules, the Arbitral Tribunal should "***fix the costs of the arbitration and decide which of the Parties shall bear them or in what proportion they shall be borne by the Parties***".

11.2 As stated in paragraph 9.2.1 above, in its Post-Hearing Submissions, the Claimant had quantified its fees and costs in the sum of AED4,625,628.00. However, this amount appeared in the form of a footnote in its Post-Hearing Submissions filed on 9th December 2014.[169] Accordingly, following the Tribunal's request in its letter dated 12th December 2014, the Claimant submitted its Supplemental Post-Hearing Submission concerning the Fees and Costs on 19th December 2014.

11.3 The Claimant divided its Supplemental Post-Hearing Submission into two categories, namely:

(I) Costs imposed by the ICC in connection with the administration of this arbitration; and

(II) Attorney's fees and costs incurred by the Claimant in pursuit of recovery of contract amounts owed by the Respondents.

11.4 As has been stated within section 9.2 above, in respect of its claim for recovery of the administration costs, the Claimant submitted that it has originally paid the ICC its half of the US$650,000.00 advance on costs determined by the ICC,[170] but pointed out that as a result of the Respondents' refusal to pay their respective shares of the ICC advance, the Claimant, having been invited to do so by the ICC, covered the Respondents' share and the increased advance stipulated by the ICC in the form of a bank guarantee for the amount of US$400,000.[171] Accordingly, the Claimant submitted that, having paid the entirety of the US$725,000.00 advance imposed by the ICC[172], it was entitled to an award reimbursing this full amount.

11.5 With respect to the second category, namely attorney's fees and costs, the Claimant submitted that as of the date of its Supplemental Post-Hearing Submission, i.e. 19th December 2014, its attorneys, Baker & McKenzie, had issued it ten invoices for a total amount of US$370,283.22,[173] and provided evidence to the Tribunal that the amounts of these invoices had been paid.[174]

11.6 The Claimant added however that whilst Invoice No. 10 is dated 12th November 2014, it related only to fees incurred up to 31st October 2014 and did not include for time devoted in November and December 2014, since Baker & McKenzie were unable to issue an invoice for that period owing to a new billing system that as of the date of its Supplemental Post-Hearing Submission, remained inoperative.

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[169] See Claimant's Post-Hearing Submission, page 25, footnote 14.

[170] See Claimant's Hearing Bundle, Exhibit C-29. The Claimant adduced evidence of such payment in the form of a letter from the ICC dated 26th February 2014 confirming that the amount of US$325,000 has been paid by the Claimant. .

[171] See Claimant's Supplemental Post-Hearing Submission Concerning Fees and Costs, Exhibit C-43. The reason the bank guarantee provided by the Claimant was for the amount of US$400,000 as opposed to US$325,000 is due to the ICC's decision to raise the amount of the advance from US$650,000 to US$725,000.

[172] See Claimant's Supplemental Post Hearing Submission Concerning Fees and Costs, Exhibit C-44.

[173] See Claimant's Supplemental Post Hearing Submission Concerning Fees and Costs, Exhibits C-45.001 to C-45.010.

[174] See Claimant's Supplemental Post Hearing Submission Concerning Fees and Costs, Exhibit C-46.

11.7 The Claimant estimated this yet-to-be issued invoice to be in the amount of US$163,343.00, in addition to an approximate amount of US$25,000 associated with costs incurred during the November 2014 Hearing, and requested an extension of time, until 9th January 2015, to produce to the Tribunal a system generated invoice issued by Baker & McKenzie for the November and December 2014 time frame.

11.8 Along with its Supplemental Post-Hearing Submission Concerning Fees and Costs, the Claimant attached an affidavit of Mr. Matthew G. Allison attested to the effect that Baker & McKenzie's accounting system is undergoing an upgrade and that it cannot yet issue final client invoices. Mr. Allison further stated that having manually reviewed the time spent by Baker & McKenzie personnel and the costs associated with the November 2014 Hearing, he attests that the fees exceed US$160,000.00 and costs exceed US$25,000.00.[175] However, attached to Mr. Allison's Affidavit, was a ***"draft bill"*** dated 19th December 2014 indicating that Fees and Disbursements amounted to US$175,364.67, thus replacing the above-mentioned two figures of US$160,000.00 and US$25,000.00.

11.9 The Claimant concluded its Supplemental Post Hearing Submission as follows:
"***The total fees and costs requested by Cerner are as follows:***

ICC Costs –	***US$ 725,000.00***
Issued Baker & McKenzie Invoice Amounts –	***US$ 370,283.22***
Unbilled Baker & McKenzie Fees and Costs for November and December 2014 –	***greater than US$ 163,343.00***

Converted to AED, the first two lines above total AED 4,114,800 (1,120,283.22 * 3.673)".

11.10 The Tribunal notes that there is a miscalculation of the above total. The first two lines referred to above, i.e., US$725,000.00 plus US$370,283.22 total US$1,095,283.22 (AED4,022,975), not US$1,120,283.22 (AED4,114,800).

11.11 Accordingly, at the time of its Supplemental Submission, the Claimant's substantiated claims under both categories of fees and costs claimed were as follows:
Category (I) – ICC Costs: US$725,000
Category (II) – Attorney's Fees and Costs: US$370,283.22, plus the value of the ***"draft bill"*** in the amount of US$175,364.67, which are equal to US$545,647.89. The Arbitral Tribunal has examined the level of the Attorney's fees and costs and the value of the draft bill and has determined that they are reasonable for the work carried out by the Claimant's Attorneys.

11.12 The Arbitral Tribunal notes that the Rules do not provide any specific allocation tests and leave the allocation of costs to the broad discretion of the Tribunal, taking into account all relevant circumstances of the case, including the outcome of the proceedings.

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[175] See the ***"draft bill"*** dated 19th December 2014 attached to Mr. Allison's Affidavit as part of Supplemental Post-Hearing Submission of 19th December 2014 and intended to serve as a bill to the end of December 2014.

11.13 Having considered and examined the conduct of the Parties during these arbitral proceedings and taken into account Article 37(5) of the Rules including the non-participation of both Respondent No. 1 and Respondent No. 2, the Arbitral Tribunal hereby determines that the costs claimed by the Claimant are reasonable and accordingly decides that the Claimant is entitled to be paid by the Respondents the amount of US$661,000.00, representing the Advances paid to the ICC and a further amount of US$545,647.89, representing the Claimant's substantiated and reasonable Attorney's Fees and Expenses.

11.14 A consolidated table of all amounts awarded to the Claimant is produced below:

Head of Claim	**Appearing in paragraph No.**	**Amount Awarded**
Unpaid Overdue Amount	10.4.33	AED59,971,607.83
Unpaid Accrued Overdue Interest	10.5.16	AED28,684,772.00
Unpaid Deferred and Future Payments	10.6.12	AED95,115,289.00
Unpaid Post-Settlement Interest up to 9th December 2014	10.7.10	AED16,510,978.78
Unpaid Post-Settlement Interest after 9th December 2014 & up to 31st March 2015	10.7.10	AED38,240.60 x 112 days = AED4,282,947.20
Attorney's Fees and Expenses	11.13	**US$545,647.89**
Plus AED38,240.60 per day After 31st March 2015 and until payment is made in respect of the Unpaid Post-Settlement Interest	10.7.11	

Table No. 11.14 - Amount Awarded for each head of claim, including costs

11.15 Having carried out the analysis of Issues 5.1, 5.2 and 5.3 of the Terms of Reference in respect of the Claimant's claims and its requests, as set out in paragraph 9.1.15 above, the Arbitral Tribunal repeats and confirms the statement made in paragraph 10.1.2 above, that all the Claimant's requests are either absorbed by the orders set out in the dispositive section of this Award, Section 12 below, or have become moot in light of the Tribunal's findings and decisions.

12. THE DISPOSITIVE SECTION OF THE AWARD

Having carefully considered all the written submissions made in respect of Issues No. 5.1 to 5.3, as defined in the Terms of Reference in this arbitration signed on 10th May 2014, and as described above in this Final Award, the Arbitral Tribunal now finds, holds, decides and orders as follows:

12.1 In answer to Issue No. 5.1, the Arbitral Tribunal decides that a valid arbitration agreement between the Claimant and Respondent No. 1 exists and that this Tribunal has the requisite jurisdiction to deal with the disputes in existence between those Parties arising from both the SPA and Amendment No. 5 of the CBA. Furthermore, the Arbitral Tribunal also finds that it has the requisite jurisdiction over Respondent No. 2 for the reasons set out in section 10.2 above.

12.2 In answer to Issue No. 5.2, the Arbitral Tribunal decides and orders the following:

12.2.1 Respondents No. 1 and 2 shall, jointly and severally, pay to the Claimant the total sum of **AED**59,971,607.83 in respect of the **Unpaid Overdue Amount claim**, as has been detailed in section 10.4 and set out in Table 11.14 above.

12.2.2 Respondents No. 1 and 2 shall, jointly and severally, pay to the Claimant the total sum of **AED95,115,289.00** in respect of the **Unpaid Deferred and Future Payments claim**, as has been detailed in section 10.6 and set out in Table 11.14 above.

12.2.3 Respondents No. 1 and 2 shall, jointly and severally, pay to the Claimant the total sum of **AED28,684,772.00** as simple interest lost at 9% per annum to the date of this Award and thereafter at the rate of 9% per annum, until the date payment is made in respect of **Unpaid Accrued Interest on the Overdue Amount**, as has been detailed in section 10.5 and set out in Table 11.14 above

12.2.4 Respondents No. 1 and 2 shall, jointly and severally, pay to the Claimant the total sum of **AED16,510,978.78** as simple interest lost at 9% per annum to 9th December 2014 in respect of the **Unpaid Post-Settlement Interest**, as has been detailed in section 10.7 and set out in Table 11.14 above.

12.2.5 Respondents No. 1 and 2 shall, jointly and severally, pay to the Claimant the total sum of **AED4,282,947.20** as simple interest lost at 9% per annum from 9th December 2014 to 31st March 2015 and thereafter at the rate of 9% per annum, which is equal to AED38,240.60 per day until the date when payment is made in respect of the **Unpaid Post-Settlement Interest**, as has been detailed in section 10.7 and set out in Table 11.14 above.

12.3 All other claims in this arbitration are hereby rejected and dismissed.

12.4 In answer to Issue No. 5.3, the Arbitral Tribunal decides and orders the following in accordance with Article 31 of the Rules relating to costs of the Arbitration:

12.4.1 Respondents No. 1 and 2 shall bear their own costs arising from, or in relation to these proceedings and shall, jointly and severally, pay to the Claimant the sum of **US$545,647.89** towards the Claimant's costs arising from or in relation to these proceedings;

12.4.2 Respondents No. 1 and 2, jointly and severally, shall reimburse the Claimant the sum of US$661,000.00 in respect of the ICC deposit provisionally paid by the Claimant in that amount; and

12.4.3 Respondents No. 1 and 2, jointly and severally, shall pay the Claimant simple interest at the rate of 9% per annum, from the date of this Award until the date payment is made in respect of the sums in paragraphs 12.4.1 and 12.4.2 above.

This is a unanimous Final Award.
Place of arbitration: Paris, France.
This Award is signed and issued in Paris on 16th July 2015.

Dr. Nael G. Bunni,
President of the Arbitral Tribunal

Mr. Andrew de Lotbinière McDougall
Member of the Arbitral Tribunal.

Dr. Omar Isam Al-Taher
Member of the Arbitral Tribunal.